TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 158.

THE MATERIAL OF THE "DEMANGHE," P. DONOHUE, ET AL., CLAIMANTS, APPELLANTS,

vs.

THE COAST WRECKING COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED DECEMBER 2, 1867.

SUPREME COURT OF THE UNITED STATES.

No. 158.

THE MATERIAL OF THE "CAMANCHE," P. DONOHUE, ET AL., CLAIMANTS, APPELLANTS,

vs.

THE COAST WRECKING COMPANY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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Libel.

To the Honorable Ogden Hoffman, judge of the District Court of the United States in and for the northern district of California:

The libel of Artemus T. Fletcher, as agent, and on account of the Coast Wrecking Company of New York, interested as salvors, against the materials, machinery, tools, and other appliances, of every description, for constructing and equipping the iron-clad turretted floating steam battery "Camanche," in a cause of salvage, civil and maritime, alleges as follows:

First. That on the night of the 15th day of November, 1863, the ship "Aquila," having then and there on board, as cargo, the said materials, machinery, tools, and other appliances, of every description for constructing and equipping the said clad turreted
2 floating steam battery "Camanche," did, by the violence of winds and waves, founder and sink in the bay of San Francisco, State of California, at or near Hathaway's wharf, Rincon Point, city and county of San Francisco; that said cargo was estimated to be, and was, about fifteen hundred tons weight, and in such mass and of such peculiarity of construction and was so stayed and stowed in said ship as to render it difficult and perilous to discharge the same from said ship under the most favorable circumstances; that after said ship had so foundered and sunk, as aforesaid, she lay upon a rocky, shelving shore, her bow sunk in about forty-eight feet of water, her stern in about seventeen feet of water, with a strong list off shore; that, lying in this position, the waters of the bay rapidly saturated and filled said ship with mud and other filth, thereby covering the
3 said cargo with such mud and filth to the extent in weight of seven or eight hundred tons, thereby rendering it exceedingly difficult to lay hold of, fill, and discharge the said cargo or to free any portion of it from the weight of said ship; that after said ship had so as aforesaid, foundered, and such various attempts, by means of pumping out said ship, were made in order to raise said ship and discharge and save said cargo, but said attempts were all and singular unsuccessful, and said cargo remained in said ship and covered with water and buried in mud, as aforesaid, from the said 15th day of November, 1863, until about the 28th day of January, 1864; that during this period, in addition to the said attempts to raise said ship by pumping, as aforesaid, the mechanical
4 and scientific skill and practical experience of the community were turned towards and centered upon said ship in the hope of devising some means of reserving said cargo from destruction and from entire abandonment to the winds and waves; that all such scientific and practical skill and efforts were unavailing for any useful purpose whatever.

Second. That on or about said 28th day of January, 1864, the libellants took possession of said wreck and proceeded to, and did, save and rescue all and singular the materials of the aforesaid battery; that in so doing they employed submarine divers, who labored in

the hold and between decks of said ship at a depth of from fifteen to thirty feet under water, and underneath said mud and filth, with extreme peril of life and limb, and at all times during such their labor in freeing said materials, piece by piece. from said ship, in attaching suitable drawing and hoisting apparatus, and in guiding and directing the said apparatus to as to extricate said materials, piece by piece, from said ship; that all these labors were attended with prodigious exertions, exposure, and imminent peril, as well to death from drowning as from the heavy, unwieldy character of said cargo and its slimy and filthy condition; that the libellants, by this process and through this exposure and danger, reserved from the said wreck all said materials, tools, and machinery belonging to said "Camanche," consisting of many thousands of pieces, which were found in said wreck, rescued therefrom, piece by piece, and weighing in the aggregate about fifteen hundred tons; that libellants were occupied in this work of rescuing said cargo for about three and a half or four months from said 28th day of January, 1864.

Third. That had it not been for extraordinary and hitherto unheard-of labors, exposures, and perils of the libellants, their agents and servants, hereinbefore stated, the said materials, machinery, tools, and other appliances for constructing and equipping the said "Camanche," and the assistance rendered by libellants to said ship "Aquila," the said materials, machinery, tools, and other appliances for the construction and equipping of the said "Camanche," would have been entirely lost.

Fourth. That the libellants and their agents and servants, by reason of the services so performed and the risk and hazard they ran in saving the said cargo of said ship "Aquila," so consisting of said materials, &c., of said "Camanche," deserve and are justly entitled to meet and competent salvage for such service and to so much as has been and actually is usually allotted by this court to persons doing and performing the like service, with the charges and expenses attending the same.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this hon. court.

Wherefore the libellants pray the process in due form of law, according to the couse of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said materials, machinery, tools, and other appliances of every description for constructing the said iron-clad turretted floating steam battery 'Camanche," and that all persons pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree such a sum of money or proportion of the value of the said materials, machinery, tools, and other appliances of every description for constructing and equipping the said "Camanche," to be due to the libellant salvors, as a compensation for their salvage service as shall seem meet and reasonable, together

with their costs and expenses in this behalf sustained, and that said materials, machinery, tools, and other appliances of every description for constructing and equipping the said "Camanche," may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

ARTEMUS T. FLETCHER.
E. CASSERLY and
W. H. L. BARNES,
Proctors for libellants.

Sworn to and subscribed July 15th, 1864, before me.
W. H. CHEEVERS, *U. S. Com'r.*

Endorsed: Filed July 15th, 1864.

District Court of the United States for the northern district of California.

Bond.

9 UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 15th day of July, in the year of our Lord one thousand eight hundred and sixty-four, by the Coast Wrecking Company of New York against the materials, machinery, &c., of the "Camanche," for reasons and causes in the said libel mentioned, and the said Artemus T. Fletcher and C. V. S. Gibbs and C. Adolphe Low, his sureties, parties hereto hereby consenting that, in case of default or contumacy on the part of the libellants or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and
10 each of them is, bound in the sum of five hundred dollars, conditioned the libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or, in case of appeal, by the Appellate Court.

ARTEMUS T. FLETCHER.
C. V. S. GIBBS.
C. ADOLPH LOW.

Taken and acknowledged this 15 day of July, 1864, before me—
W. H. CHEVERS,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

C. V. S. Gibbs and C. Adolph Low, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of [illegible] hundred dollars over and above all his just debts and liabilities.

C. V. S. GIBBS.
C. ADOLPHE LOW.

Sworn to this 15th day of July, 1864, before me—

W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed this 15th day of July, 1864. W. H. Chevers clerk.

(50-cent U. S. revenue stamp, cancelled.)

11 *Monition.*

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas a libel hath been filed in the District Court of the United States for the northern district of California on the 15th day of July, in the year of our Lord one thousand eight hundred and sixty-four by the Coast Wreck Company, of New York, against the materials, machinery, tools, and other appliances of every description for constructing and equipping the iron clad, turreted-floating steam battery "Camanche," for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all parties interested in the
12 said materials or vesssel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being read that the said materials or vessel, her tackle, &c., may, for the causes in the said libel, mentioned, be condemned and sold to pay the demands of the libellant, you are therefore hereby commanded to attach the said materials or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the northern district of California, on the 26th day of July inst., at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the
13 same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Odgen Hoffman, judge of the said court, at the city of San Francisco, in the northern district of California, this 15th day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence eighty-ninth.

W. H. CHEVERS, *Clerk.*

CASSERLY & BARNES, *Proctors for libellants.*

In obedience to the within monition, I attached the Camanche, &c., therein described, on the 15th day of July, 1864, and have given due notice to all persons claiming the same, that this court will,

on the 26th day of July, 1864, (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be in-
14 terposed for the same.

Dated July 15th, 1864.

CHAS. W. RAND, *U. S. Marshal.*
By M. R. GRANT, *Deputy.*

Indorsed: Filed July 26th, 1864. W. H. Chevers, clerk.

At a stated term of the District Court of the United States
15 of America for the northern district of California, held at the court room, in the city of San Francisco, on Tuesday, the 26th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Present· The Hon. Odgen Hoffman, district judge.

Order on return of monition.

THE COAST WRECK CO. OF NEW YORK
versus
MATERIALS, MACHINERY, ETC., OF THE Camanche.

The marshal having returned upon the monition upon this cause that he had attached the said materials, etc., and had given due notice to all persons claiming the same, that this court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same, on motion of Casserly and Barnes, proctors for libellant, proclamation was made for all persons
16 having anything to say why the said materials, etc., should not be condemned and sold to answer the prayer of the libellant to appear. H. & C. McAllister appeared for Donahue and Ryan, and W. H. Sharp, esq., U. S. attorney, appeared for the U. S.; and on motion it is hereby ordered that they each have ten days to plead, no other parties appearing.

On like motion it was orderd that default of all parties not in court be, and the same is hereby, entered.

Indorsed: Filed July 26, 1864. W. H. Chevers, clerks

In the United States District Court in and for the northern district of California.

17 *Claim.*

THE COAST WRECKING COMPANY of New York
vs.
THE MATERIALS OF THE CAMANCHE.

To the Hon. OGDEN HOFFMAN, judge of the District Court of the United States in and for the northern district of California:

And now come Donohue, Ryan and Secor, owners of the materials of the "Camanche," libelled in the above-entitled cause, intervening

for their interest in said materials, appear before the honorable court and claim said materials, and state they are true and bona fide owners of said materials, and that no other person is the owner thereof.

And thereupon the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

18 PETER DONAHUE.
For Donahue, Ryan and Secor.

Sworn to before me this 10th day of August, 1866, by Peter Donahue, one of said claimants.

W. H. CHEVERS, *Cl'k.*

Endorsed: Filed Aug. 10th, 1864. W. H. Chevers, clerk.

19 District Court of the United States for the northern district of California.

Bond of claimants.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 15th day of July, in the year of our Lord one thousand eight hundred and sixty-four, by the Coast-Wrecking Company of New York, against the materials, machinery, etc., of the Camanche, for reasons and causes in said libel mentioned; and whereas, Donahue, Ryan and Secor have this this day filed a claim as the true and bona fide owners of the materials, machinery, etc., of the Comanche, and the said Peter Donahue, one of the claimants, and Edward Martin, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimants or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the
20 benefit of whom it may concern, that the undersigned shall be, and each of them is, bound, in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or, in case of appeal, by the Appellate Court.

PETER DONOHUE.
EDWARD MARTIN.
JOHN MALLON.

Taken and acknowledged this tenth day of August, 1864, before me—

W. H. CHEVERS,
U. S. Comm'r.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Edward Martin and John Mallon, parties to the above stipulation being duly sworn, do depose and say, each for himself, that he is

worth the sum of five hundred dollars over and above all his just debts and liabilities.

EDWARD MARTIN.
JOHN MALLON.

Sworn to this tenth day of August, 1864, before me—
W. H. CHEVERS,
U. S. Commissioner.

Endorsed: Filed this 10th day of August, 1864. W. H. Chevers, clerk.

21 In the District Court of the United States in and for the northern district of California.

Deposition of N. R. Brewer.

THE COAST WRECKING COMPANY of New York
vs:
THE MATERIALS OF THE CAMANCHE.

It is hereby stipulated, consented, and agreed, by and between the respective parties to the above-entitled cause, that the deposition and testimony of N. R. Brewer, a witness to be produced and examined on behalf of claimants in said cause, be taken before W. H. Chevers, U. S. commissioner, at his office in the U. S. Court building, on the southwest corner of Jackson and Montgomery streets, in the city and county of San Francisco, on Wednesday, August 24, 1864, at 11 o'clock a. m., and continuing from time to time thereafter until completed, and that said deposition and testimony, when taken, be read and used in evidence on any trial thereof, or proceed-
22 ing therein, subject to the same objections and exceptions as if said witness was personally present on the stand; but without objection or exception to the time, place, and manner of taking the same, all objections or exceptions thereto being hereby expressly named.

Dated San Francisco, August 23d, 1864.

E. CASSERLY,
For Libellants.
H. & C. McALLISTER,
For Claimants.

U. S. District Court nor. dis. of California.

23 *Deposition of N. R. Brewer.*

THE COAST WRECKING CO., of New York
vs.
THE MATERIALS OF THE CAMANCHE, etc.
} In admiralty.

Examination of witnesses on behalf of claimants, taken in pursuance of the stipulation hereto attached, before me, W. H. Chevers, U. S. commissioner.

SAN FRANCISCO, *August 24th* 1864.

Present: Hall McAllister, esq., proctor for claimant; Casserly and Barnes for libellant.

Nicholas R. Brewer called and sworn as a witness for claimant.

Examination adjourned until Saturday next, at 10 o'clock a. m.

SAN FRANCISCO, CAL., *August* 27, 1864.

Examination of N. R. Brewer resumed from the 24th inst.

Present: H. & C. McAllister, proctors for claimants; Casserly & Barnes, for libellants.

24 Questions by proctors for claimant:

Ques. 1. What is your name, age, place of residence, and occupation?

Ans. 1. My name is Nicholas R. Brewer; my age is 68 years. I reside in Brooklyn, N. Y.; my occupation is that of master mariner, and have been for about 40 years.

2. What was your last voyage? with what ship? and to what ports?

Ans. My last voyage was in the ship Aquilla from New York to this port. I was the master.

3. Of what did her cargo consist?

A. It consisted of the monitor "Camanche;" shot, shells, guns, and ordinance stores generally, with tools and machinery to put up the Camanche.

4. When did you leave New York, and what was the length of the voyage?

Ans. We left New York the 29th May, 1863, and arrived here the 10th November following.

5. In what condition was the monitor Camanche when stowed on board the Aquilla.

25 Ans. All in sections; all the plates of the vessel; all the engines, boilers; all in pieces suitable for stowage; I don't know in how many, but it was in many hundred pieces.

6. State the quantity of shot, shell, and ordnance stores on board.

Ans. There were five hundred shot and five hundred shells, grape, and cannister, two guns and rammers. These articles may have all been part of the Camanche, but they came as government freight, and separate and distinct, so far as the freight was concerned, from that of the Camanche.

7. State the time of your anchoring in San Francisco and the incidents occurring thereafter.

Ans. We came to anchor about 5 o'clock p. m. of the 10th of November, off North Point dock; remained there that night; laid there in the same position until Saturday the 4th, when we moved by steam tug to about 300 yards to the southward and eastward of Hath-

26 away's wharf, Rincon Point; we came to and anchored, with our starboard anchor in about six fathoms water. About 7 o'clock p. m. we let go our port anchor, the wind being from the southward, with a good strong breeze and a little rain. About mid-

night a squall came on; the ship commenced to drag; the ship Isca, to the northward of us, commenced and dragged until she brought up on a rock bearing about east from Hathaway's wharf, and about 300 yards therefrom. My vessel drifted down about abreast of the Isca, clear of her, but close to her. By a cant of the wind or tide the ships collided; she struck us on our port side in the upper works, her stem coming in contact with our upper works abreast of the forward part of the main hatchway; we remained in contact about three quarters of an hour. The Isca carried away about 28 feet of our bulworks. It was chiefly occasioned by my slacking one of the chains so as to swing clear. There was no damage to us below the
27 plank shear. We got a line to the wharf as quickly as possible, and hove the ship clear. After we swung clear I sounded the pumps, and found no extra water. We got two hawsers out; had assistance from the shore. This was probably between 1 and 2 o'clock a. m. In going from our first anchorage to our second anchorage off Hathaway's wharf we had a pilot on board. The next morning, the 15th November, between 8 and 9 o'clock, the pilot came on board. Then we made preparations to get up our anchor and get alongside Hathaway's wharf, with the assistance of a steam-tug. The weather had moderated some hours previous to the pilot's coming on board; the tug came alongside shortly after the pilot's arrival. The pilot remained on board and controlled until we got into the wharf; we got into the wharf about noon, I think, the tug assisting us until we got into the wharf. The ship was secured, under the directions of the pilot, by hawsers and small chains aft, and hawsers and ropes forward; she was properly secured to the wharf. She also had up and down wooden tenders and bales of hay;
28 I think there were five of them; they were strapped well with ropes and hung over the sides. At the time the vessel was secured the weather was good, and continued so until about ten o'clock, when it began to blow hard, very hard, from the southeast; the sea got up about that time, and a bad sea. When it first began to blow we got up, examined our fenders, and looked around to see that everything was right, and the first thing I knew she began to strike aft; the ship was lying with her head to the eastward and off shore. Then I sent the mate down to get up another chain, although I knew the ship was well secured for any ordinary weather. The mate came up shortly afterwards, and said that the vessel was bursted aft in the port quarter, and that the water was rushing in. Then we had the pumps manned and had plenty of men to work them. There were a good many men came from the wharves in addition to
29 who were on board. We had abundance of help at the pumps, more than we could employ. I called the 3rd mate to get a lantern, and I ran down with him into the lower hold, and I found the water forcing itself through the ceiling or skin of the ship under the starboard quarter. We kept the pumps agoing. I came on deck immediately. It was a dreadful night, and a great confusion. I sent a messenger to acquaint Donohue and Ryan of the condition of the ship, and also another messenger to see if any fire engines could

be got to pump her out. The water gained on us very fast. About one o'clock a. m. the water was nearly up to the lower deck; the ship was filling fast, and we abandoned the pumps. We then got out our anchor chain, unshackled it, carried it ashore and fastened it to the piles of the wharf, lashed it to the mainmast, and secured it as well as we could to keep the vessel close to the wharf and from falling into deep water. We staid by the ship until about 3
30 o'clock a. m. The men passed their things ashore, and had to jump for their lives. The water at this time was level with the top gallant forecastle, and the vessel was in considerable motion. I knew that the vessel was going down; they were all ashore but two when I jumped ashore. One of these two got overboard in trying to get ashore, but was saved; the other man got up in the rigging, had a rope thrown him, and got ashore, and the ship went down, head foremost, two or three minutes after I jumped ashore. The chain saved her from drifting out into deep water. The ship went down about 3 o'clock a. m. Monday, the 16th November. Nothing of consequence was done during the balance of the 16th, except that a consultation was held by a Mr. A. T. Fletcher, agent of the N. Y. underwriters, Mr. Donahue, Ryan, and myself as to what was best to be done with regard to the vessel. On the 17th November,
31 in accordance with what we had determined upon the day before, we made preparations for dismantling the ship for the purpose of easing her. We commenced dismantling the vessel by sending down her yards and spars, all except the foretopmast, which was housed. Then up to December 3rd we kept on dismantling and making preparations for pumping, with a large gang of men employed. There was very little damage done by dismantling, except carrying some of the cross-trees, losing some of the blocks, and some of the chain and sheets lost. The cross-trees were broke, and all the running rigging was used up. When I speak of the rigging being used up, I mean that it was used up in pumping, or trying to pump out the vessel. The preparations for pumping were made in accordance with the means of all parties here, myself and Capt. Fletcher included, and the pumping was carried on under the direc-
32 tion of Capt. Fletcher principally. I was present and approved of what was done. Mr. Ryan undertook to go in and help get the pumping done. Mr. Ryan was hired by Capt. Fletcher, I consenting.

These preparations for pumping were as follows: building platforms to cover the three hatchways; the platform for the main hatchway was a very large one, more than covered the main hatchway. Those platforms were to lay on the deck over the hatchways, pig iron on the top of them, and to be screwed down to the deck The object was to keep the vessel tight to pump her out. The main hatchway platform had a large water tight box coming up through the water, so as to let the pump through; there were blacksmiths at work making iron work to secure the platforms; there were riggers building stages above the water for the pumps, and those engaged in working there to mark from; the sailmakers were

33 thrumming a large sail to go under her bottom; there were carpenters putting a deck on a scow to be used, and caulkers caulking the scows and platforms; there was an immense deal of work on those platforms; the plumbers were working about those platforms; there were riggers getting chains out to the mainmast, ready for hauling the vessel up, and a great many other arrangements necessary for pumping. Before we began to pump her out we commenced to cut up the cabin and main deck abaft; a part of the cabin deck was out of the water, and part of the main deck was out of the water at low tide. Through these openings on the two decks we took out cargo, some sixty or seventy tons, consisting of pieces of the Camanche, boxes of machinery, and some things belonging to the ship. but not much belonging to the ship. They commenced pumping with nine steam-pumps on the 3rd December, the day before I
34 was taken dangerously ill, and continued sick for nine days. When I got about again I found the vessel still lying there; the pumping proved a failure, and the rope, rigging, &c., used up, lost, and gone. The ropes were used up in lashings, warps, falls, tackles, etc., and all the preparations were nearly all removed, and the attempt to pump her out abandoned.

On the 2d January, 1864, Capt. Fletcher and myself made an agreement with some person to put some fifteen chains under the keel of the vessel for $3,000, if successful; otherwise, nothing. He worked until the 11th January, and accomplished nothing; abandoned the job, and got paid nothing.

Examination adjourned until Monday next, at 11 o'clock a. m.

Examination of N R. Brewer resumed from Saturday last.

Present, all the parties.

35 Ques. 8. Why was it that the Aquila was docked sternforemost when she first went into Hathaway's wharf?

Ans. When we arrived it was in the evening. We first expected to dock our vessel at North Point dock, and prepared to discharge by taking up the combings of the main hatch, and three or four feet of the main deck on the port side of the main hatch. When we were ordered into Hathaway's wharf, in order to get the opening nearest to the wharf, we had to go in stern foremost.

9. You say that on the night of the 15th November the mate reported to you that the vessel was bursted in abaft on the port quarter? What was the real fact as to this alleged bursting in?

Ans. The real fact was, that this water run in from the keel. We found that out a day or two afterwards. It run from the keel, and forced up through the ceiling; and there were no butts started,
36 and no breaking in a piece of the keel. About thirty feet afterwards came up—the after scarf of the keel.

10. State when Capt. Merritt, with his party, arrived, and when he went to work upon the Aquilla.

Ans. He arrived on the 18th January, 1864, and commenced work on the 25th January, 1864.

11. Who composed the party of Capt. Merritt?

Ans. I think he brought about 12; of these twelve, I think, four were divers, one foreman, one engineer, and the others were general assistants. He also employed more men. At times he had, in all, 16 or 17 men employed. I think, on an average, he had about fifteen men employed. When the camels were built he employed extra carpenters. When he commenced work on the 25th January, he was making preparations until the 28th January, at which time he commenced discharging cargo by sending divers down
37 through the aperture in the cabin and main deck, which had been previously cut, and the divers made fast to the cargo, and it was hoisted out by tackle. In that way nearly all the cargo was discharged, but not through that opening. When the cargo was taken out it was placed in lighters. These lighters were Capt. Merritt's, as well as the most of the other appliances he used. On the 28th January, Merritt cut away the lanyards at the mizen rigging, to let the lighters get nearer to the deck. Merritt, with his people, worked at the wreck from the 25th January to the 16th July following. Capt. Merritt, with most of his men, left here the 13th June, leaving his foreman, Capt. Pool, in charge of the work.

(Here the witness produces a book, and says:)

This is an old log-book of the ship Aquilla, which I kept myself from the 17th November, 1863, onward. I made the entries
38 contained in this book as the occurrences happened, but in another book, and then copied them off into this book. Here is the other book, where I made the entries of the transactions as they occurred. By looking at this book my memory is refreshed as to the circumstances as they occurred. I now detail the occurrences as they happened:

January 29th, 1864. The wreckers cut away the pump-box of the platform of the covering of the main hatchway, which had been built for pumping out. It blew so strong from the southeast, that they couldn't work. In cutting away the pump-box of the platform, which set the platform adrift, and this carried off the forecastle or forward cabin deck, by the platform striking it.

January 30th. The wreckers worked.

" 31. Sunday, no work.

February 1. The wreckers worked.

" 2. They cut away part of the main deck abaft in two places, and the partner beam of the mizenmast. This was
39 done for the purpose of getting cargo out. The piece of the forward deck that was knocked off by the platform was sold this day for $5 00, and the money paid to Capt. Fletcher.

February 3rd. Wreckers worked.

" 4th. Wreckers worked; cut up the main deck and a beam of the deck, to make room; broke up the combings of the after hatchway, to make room; cut away the lanyards of the main wrigging to get the lighters in.

February 5. Wreckers continued taking out cargo, and cut away another piece of the main deck.

Feb'y 6th to March 4th, inclusive. The wreckers worked every day, Sundays excluded, taking out cargo.

March 4th. Wreckers cut away more of the main deck aft. From this date continued work until March 15th, Sundays excluded, when one of the wreckers lost the top of one of his fingers by getting it jammed below, rendering an amputation of a part of the fingers necessary.

40 March 16th and 17th. The wreckers continued to work; but on the 18th it was bad weather, and they did no work.

March 19, 21, 22, 23, and 24. The wreckers were at work.

March 24. The wreckers cut away another beam of the deck and another portion of the main deck, to make more room in the main hatchway.

March 25th, 26th, and 28th. The wreckers worked.

March 28th. In the forenoon they cut away more of the main deck and another beam of the main deck. In the afternoon they were getting out cargo.

March 29, 30, and 31, and April 1st. The wreckers worked.

April 2d. The wreckers worked.

" 3. Sunday. I was not present; but the weather was blowing from the southeast; considerable sea. I was not down on Sunday. I returned to the vessel.

April 4. Monday. I found the main and main topmast stays cut away; two of the fore shrouds cut away; fore topmast back

41 stays cut away, and the foremast chafed. I know the cause of this cutting away from hearsay. Capt. Merritt told me that a schooner drifted over the vessel's deck, and to get her clear it was necessary to do this cutting away for the benefit of the ship and cargo, and all concerned. From that time until April 27th (Sundays exclusive) the wreckers worked as usual.

April 27. The wreckers made preparations with chains, &c., for the purpose of raising the ship. They cut away the starboard fore topmast and the top gallant back stays.

April 28. The wreckers at work getting chains through the hawse-holes to the camels. Preparations for raising the ship.

April 29. The wreckers worked as usual.

April 30. The wreckers cut away parts of the main deck, and got chains round the beams of the main deck forward.

42 May 2. The wreckers got the chains off the quarter for lifting the ship; also cut holes in the deck for chains, etc., to pass through under the beams; also took the head stays off the fore topmast.

May 3. They continued to make preparations for raising. Four camels were secured, with chains, to the hawse-hole beams and chocks of the ship.

May 4. They sent down the foretopmast; cut away the cross-trees of the foretop. At high water the ship raised out of her bed with the camels fast to her; got a small chain under her. In the evening the ship swung around in a little deeper water; parted some of her fasts, and brought up by a chain cable and on the bottom; carried away some of the chocks the chains were fast to forward. The knee of the rail abaft was carried away, and broke and strained rail and

staunchion. The strain on the chains being too great upon the camels, the chocks of the ship gave way. They carried out
43 the anchor of the ship with a hawser to the anchor made fast to the foremast, to keep the ship in position.

May 5. Wreckers cut fresh holes in the deck for the purpose of getting the chains around other beams, to raise her sufficiently to get chains under her bottom.

May 6. Divers employed in cutting holes in the deck, to get chains around the beams.

May 7. Merritt's men employed the same way.

" 9th. They were employed getting chains under the bottom. Raised the ship with five camels fastened to the hawse-holes and beams. About 5.30 o'clock p. m. the after chain to the wharf parted. At the same time the strain on the camels tore up two or three beams and a portion of the deck; obliged them to let the ship take bottom. Also broke the rail abaft, and started the deck around the bitts.

May 10. Wreckers at work regulating camels and pumping them out.

44 May 11th. They were employed getting chains under the bottom, &c. The combings of the forward deck floated up from the deck above water, because they were ripped up.

May 12 and 13. Wreckers employed about the chains and camels.

May 14th. Six large chains were under her bottom; one through the hawse-holes, and one through or under the forward beam, all secured to 8 camels.

May 15th. Undertook to move the ship, but was not successful. She moved a little off from the wharf, but came back again.

Examination adjourned until to-morrow, at 10 o'clock a. m.

Examination resumed.

MAY 30, 1864, 10 *o'clock, a. m.*

Ques. 12. State what occurred on May 16th and thereafter.

Ans. May 16. This morning moved or floated the ship from
45 the wharf about 150 or 200 yards on the flat ground with the flood-tide. The ebb-tide took her back again a little. At night high water brought her a little more in shore.

May 17.—The wreckers were at work getting a chain under the ship. In the evening the starboard forward camel having a great strain on it, broke up the forward beam and deck, &c.

May 18th.—The wreckers were employed in preparing to raise the ship, and moved her nearer in shore.

May 20th.—The wreckers cut away part of her upper works abaft for a chock, &c.; that is, they cut away a piece of the rail and bulwark around the cabin deck abaft. They raised the ship a little, and got her nearer in shore. At low tide her forecastle was out of water.

May 21, 23, and 23d.—They were raising the ship and getting her nearer in shore. On the 23d we found the port tank gone—an iron-

bound tank, which holds about 800 gallons of water; supposed it was washed away soon after the forecastle deck.

46 May 24, 25, and 26.—Employed in clearing off barnacles, mud, &c. The sails were hove overboard; they were rotten, and not worth anything. The crew unbent these sails under my direction. This was done when we were laying in the stream, before we entered the wharf. These sails were placed in the forecastle that was knocked away afterwards. They then lay on the deck.

Ques. 13. Why were not these sails saved when you first commenced working on the ship?

Ans. The whole time was employed making preparations for pumping out the vessel. The sails, in consequence, were neglected. My desire was to get out these sails; but the divers we had employed would have charged a tremendous price to get them out. I might say that Capt. Fletcher had more to say about these sails than I had. We were bothered by the first set of divers a great deal. The sails were in the house until it was knocked away. The sails

47 remained there until Capt. Merritt came. He hauled one or two of them up, and did not consider they were worth saving. They remained there till the vessel was out of the water, when they were hove overboard. It was considered of more consequence to attend to the cargo than the sails. The great object was to attend to the cargo, in preference to anything else.

14th. Had any attempt been made to save these sails? How long would it have taken to have done it?

Ans. It might have taken the wreckers a large part of the day, or may be the whole day, when they (the wreckers) first came; but they would have been in a damaged state. When Capt. Fletcher first came, had he attempted to save the sails, or agreed to have it done, he could have saved them in pretty good order.

15th. What amount of mud was found in the vessel, and in what part was most of it found?

48 Ans. That is a hard question to answer. To the best of my knowledge and belief, the mud and barnacles that was on her to be, at the least calculation, 600 tons. It might overgo that considerable, but I do not think it was any less. The barnacles were around her principally outside. The mud was on the upper deck, lower deck, in the hold, and all through her.

16th. How many days do you suppose it took to get out the mud?

Ans. I suppose it might have taken about six days. There was a great deal of it pumped out, besides the labor. If the men had worked alone, without the pumps, it would have taken about six days.

17th. In regard to the cutting of the beam and deck, and all the cuttings which you have heretofore testified about, did you see those cuttings when the vessel was floated out of the water?

Ans. Yes; I saw these cuttings.

18th. State the portion of the deck cut away, if any, on

49 the 11th June, and the extent of the cuttings, if any, which were made on that day.

Ans. They cut off a large square piece from the upper main deck forward the mainmast. The cutting might have been 15 or 18 feet long and about 4 or 5 feet wide. They cut the stanchions off, too, right abreast of the main hatchway. There were three stanchons cut away.

19th. State the condition and position of the ship "Aquila" after she sunk at Hathaway's wharf. In what depth of water did she lie, and what list, if any, did she have?

Ans. She lay hard down in between 6 and 7 fathoms of water—high water—with a list of perhaps 35° to the starboard. The stern, on the port side, was out of water as far as the after part of the main channels. On the starboard side, the whole ship was under water at high tide, except a little aft the rail close astern.

20th. What was the tonnage and depth of the hold of the Aquila?

Ans. Eleven hundred and nineteen tons registered. I think her hold was 22 feet.

50 21st. Who stowed the cargo of the Aquila before she left New York; and do you know how it was stowed and stayed?

Ans. I can't remember the stevedore's name. It was stowed well, and secured well. In the first place, the timbers of the Camanche were put on board; these were placed in the bottom of the hold. After that was done, we commenced on the iron, and continued to take in piece by piece, and stowed it in that part of the vessel we thought most suitable, and continued so until the cargo was all in. As we put the cargo in we secured it with proper dunnage. Extraordinary pains were taken to secure the cargo. In many places it was wedged with blocks of wood—always wood, where it was required. After it was all in, the carpenters put a flooring wherever it was necessary, and secured it all with stanchions. It was secured with great care, and firmly fixed in the hold of the ship.

22nd. Who superintended or had the main charge of the
51 the attempt to raise the Aquila by pumping?

Ans. The charge was given to Mr. Ryan, who had the charge of preparing the platforms. He also had the charge of securing the vessel, to go on with the pumping. Before Capt. Merritt came, divers were employed by Capt. Fletcher for examining the vessel and stopping the leaks outside. They found the keel gone.

23rd. Do you know for whose account the efforts to raise the ship by pumping, which you have detailed, were made? If you do, state.

Ans. For whoever it might concern.

24th. Why was the attempt to raise the ship by pumping abandoned?

Ans. Because we could not get the water out. it was a failure.

25th. At whose direction or suggestion was it finally abandoned?

Ans. I was sick at the time, and do not know, except from information.

26th. State whether or not that portion of the ship on which
52 Capt. Merritt's party worked, in saving the materials of the Camanche, was entirely under water.

Ans. Generally all.

27th. Did you yourself witness the work as it proceeded, from day to day, as detailed in your testimony, or do you know the facts you have stated from statements made to you by Capt. Merritt's men as to what they did or did not do under water?

Ans. I believe my statements are all correct, from what I have seen myself and from information I got from others. I was ashore a great part of the time. I could not see the work that was done under water until the ship was raised.

28th. Did you not depend entirely for your knowledge of what went on, from day to day, upon the deck or in the hold of the Aquila upon what others had told you?

Ans. For all that was done under water I had to depend on the information of others. Most of the main deck was under
53 water. So far as it was under water, I had to depend upon what was reported to me from time to time.

29th. During the time that Capt. Merritt and his party were at work, had you any official or business connection with or direction of his party? If you had, state what it was.

Ans. I had none; he took the whole direction.

30th. For whom, and for what purpose did you keep the log or memorandum book for the fact stated by you in this examination?

Ans. I considered it my duty to do so as master of the vessel for those whom it might concern.

31. Were you present at the wreck during each of the days, and the progress of the work done on each day, to which you have testified?

Ans. I believe I was there every day except during my sickness, except one or two days I have already mentioned as not having been there.

32. Were not the various cuttings of the main deck which
54 you have mentioned absolutely essential to the successful discharging of the cargo?

Ans. I should suppose so. I never interfered; Capt. Merritt was the judge of that.

33. In your judgment, could the ship Aquilla ever have been raised from the position in which she lay without previously discharging the cargo?

Ans. I can't tell; there are so many inventions now a days that it is impossible to say. I never saw any diving before.

34. In your judgment, and with the means and appliances at hand, could the ship have been raised except by previously discharging her?

Ans. The plan pursued was the best. I can't say whether she could have been raised or not without discharging her.

35. State to what extent, in your judgment, the work done by the wreckers in the hold and between decks, in discharging her
55 cargo, was perilous to the lives and limbs of the men so employed.

Ans. I have never seen divers before, but suppose it was a very

great risk. It was a very peculiar and nasty cargo to get out of a vessel under the most favorable circumstances.

36. What sort of a cargo was it to discharge under the circumstances in which the Aquila was placed, and her condition at the time Capt. Merritt's party commenced working on her?

Ans. It was a very peculiar cargo. I should consider it a dangerous cargo under the circumstances.

37. You say dangerous cargo. How and to whom dangerous?

Ans. To the divers. Dangerous in under the water and slinging the cargo.

38. What effect, in your judgment, did the mud (600 tons) of which you spoke have in enhancing or diminishing the danger to the divers of whom you have spoken?

56 Ans. I suppose it made it more dangerous, because they could not see; they had to go by feeling.

39. How, in your judgment, did this deposit of mud effect the handling of the cargo by the men employed in discharging the ship?

Ans. I am not aware whether it was a benefit, or the reverse.

40. Do you, and if you do, please state what, if any, injury or damage was sustained by Capt. Merritt's party in discharging the cargo, other than the single accident you have mentioned?

Ans. None of any consequence that I know of. One of the divers in his second descent got entangled in some of the ropes, and was so frightened when he came up that he never went down again, and they sent him home. I suppose if he had staid down longer he would have been strangled; at least so I heard. I was not there

57 when he came up. This is all I know or heard of, except the man losing his finger. If anything had occurred I should have known it; that is, I think I should.

41. Up to the time that Capt. Merritt took hold of the wreck, do you know, and can you state, either exactly or approximately, what amount of money had been spent in the attempt to raise the Aquila in pumping or otherwise?

Ans. I do not know certainly; I understand somewhere in the neighborhood of $50,000. I signed all the bills, but do not know the amount.

42. Who presented the bills to you to sign?

Ans. They were presented to me in the office of Capt. Fletcher by him. They were left there by those to whom the bills were due.

43. Did you keep any account or memorandum of the bills you signed, either as to the amount or any other circumstance connected with them?

Ans. I did not.

58 44. Was the expenditure of $50,000, or thereabouts, of any effect whatever in raising the ship or discharging her cargo, so far as you know of? if yea, what?

Ans. Yes; in the first place it paid to dismantle the ship. It also paid for getting out considerable cargo.

45. How much did it cost to dismantle the ship and get out the 60 or 70 tons of cargo you have mentioned.

Ans. I cannot say; the bills were large. I would not like to say

without referring to the bills. I do not think it cost more than $500; don't think it cost that.

Adjourned to to-morrow, Aug. 31, at 10 o'clock a. m.

Examination of Capt. Brewer resumed.

Present, attorneys for both parties.

59 46. When the Aquilla was raised, did you make any, and if any, what, examination of her decks and hull, to ascertain if the report given you from time to time, and which you have stated in your examination, of the cutting of the decks and hull were correct or not?

Ans. I believe it all to be correct. I went all over the vessel and saw that she was cut just as I supposed she would be from the reports.

47. If the ship had not been sunk, what amount of cutting of her deck would have been necessary, if any, to discharge her cargo?

Ans. The main hatchway in the lower deck would have had to have been enlarged before she sunk.

48. In your judgment, was any other cutting done upon the ship either of deck or hull, by Capt. Merritt's party, other than what was necessary to safely discharge the cargo, and enable the wreckers to work in the hold?

60 Ans. I should judge not, under all the circumstances it was all done to save the cargo and ship

49. Can you state accurately or approximately the weight and bulk of the largest pieces of the Camanche stowed in the Aquila, and in what part of the ship they were stowed? If you can, please state.

Ans. The largest weight, as near as I can judge, was from 21 to 23 tons. The turret is the largest piece, and is about 12 or 14 feet in diameter. The two guns weighed about 21 tons each. There were a great many other very heavy pieces, whose names I don't remember. There are two boilers weighing about 20 tons each. These heavy pieces were stowed in the lower hold.

50. From time to time, as Capt. Merrit proceeded with his work, as you have detailed it, what, if any, consultation, were held with you by him, and what part, if any, did you take in the matter of his attempt to rescue the ship and cargo?

61 Ans. I gave him the whole cargo, and never detailed to him in regard to saving the cargo or ship. We never had any consultations together in regard to my interfering with the cargo. When the ship was leaving the wharf I remarked to him that he had better get her secured; that is, when they were getting the camels alongside of her, and the were beginning to float her.

Re-direct.

Ques. 51. You speak of a cutting of the deck of the vessel on the 11th June, 1864. By whom, and for what reason, was this done?

Ans. It was done of course by the wreckers, for the purpose of getting the boilers and cargo out of the ship. This was after the vessel was raised.

52. When did your mate leave you?

Ans. When the vessel sunk; that is, he ceased to be mate at that time.

53. What period does your own log, which you have referred to in testifying, embrace?

62 Ans. From May 29, 1863, the day we left New York, and was continued through the voyage.

54. Is it usual for the master to keep a private log or journal separate from that of the ship?

Ans. Generally. I always did.

55. You say that Mr. Ryan had the main charge of some of the preparations for pumping out and raising the Aquila previous to Capt. Merritt's arrival. Who appointed him to that position?

Ans. We consulted aboard the vessel, Mr. Fletcher, Donohue and Ryan, and myself. Capt. Fletcher guaranteed to Donohue and Ryan that Ryan's working on the ship should not interfere with their claim on the underwriters. The men working under Ryan, and Ryan himself, were paid by Fletcher. Ryan was paid afterwards, though no agreement was made to pay him at the time.

56 Are you an expert as to the wrecking or diving?

Ans. No; it is the first diving I ever saw.

63 57. You suggest in your cross-examination that the 600 tons of mud spoken of might increase the danger of the divers by preventing their seeing under water. Please state how the mud would produce this effect?

Ans. It muddied the water and kept it thick.

58. Have you any personal knowledge as to the fright and difficulty under the water of that diver of Merritt's party, who you say come near being strangled? or do you get these facts from information?

Ans. I have no personal knowledge; it was entirely from information.

59. What is your estimate of the cost of the attempt of Capt. Fletcher, previous to Merritt's arrival, to pump out the Aquila?

Ans. I never made an estimate of them; but understood from Capt. Fletcher that it was about $50,000 in greenbacks, I think. The bills of that expenditure are in the office of Fletcher, signed by

64 me. There are none of them in my possession. There was one bill for damage to diving apparatus from Mare Island, which I paid. It was $26 40-100. Capt. Fletcher paid it first, and I repaid him. This was within three weeks last.

60. When do you expect to leave this State?

Ans. On Saturday morning next, and hope never to return.

NICHOLAS R. BREWER.

Sworn and subscribed this 31st August, 1864, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed Aug. 31, 1864. W. H. Cheevers, clerk.

65 District Court of the United States for the northern district of California.

Bond to marshal.

Know all men by these presents that we, Donohue, Ryan and Secor, Alexander W. Macpherson, Charles S. Higgins, are held and firmly bound unto Charles W. Rand, esquire, marshal of the United States for the northern district of California, in the sum of thirty-four hundred dollars, United States gold coin, to be paid to the said Charles W. Rand, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty.

Whereas a libel has been filed in the District Court of the United States for the northern district of California on the fifteenth
66 day of July, in the year of our Lord one thousand eight hundred and sixty-four, by the Coast Wrecking Company of New York, libellants, against the materials of the Camanche for the amount of salvage to which said company may be entitled, not exceeding the sum of seventeen thousand dollars, U. S. gold coin, on which process of attachment has issued, and the said materials &c., of Camanche is in custody of the marshal under the said attachment, and Donohue Ryan and Secor, have applied for a discharge of said materials from the custody of the marshal and have filed a claim claiming the materials, as owners, and have filed a stipulation for the claimants cost pursuant to the rules and practice of the said court: Now therefore, the condition of this obligation is such, that if the above bounden Donohue, Ryan and Secor, shall abide by and perform the decree of this court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] DONOHUE, RYAN & SECOR.
[L. S.] A. W. MACPHERSON.
[L. S.] C. L. HIGGINS.

67 Sealed and delivered and taken and acknowledged this 14th day of Nov., 1864, before me.

W. H. CHEVERS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Northern district of California, ss:

Alexander W. McPherson and Charles S. Higgins, being duly sworn, deposes and says, each for himself, that he is worth the sum of twenty (20) four thousand dollars over and above all his just debts and liabilities.

A. W. MACPHERSON.
S. S. HIGGINS.

Sworn to this fourteenth day of November, A. D. 1864.
W. H. CHEVERS,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.
Dated at San Francisco this 14th day of November, 1864.
EUGENE CASSERLY,
Proctor for Libellants.

Endorsed: Filed November 14th, 1864. W. H. Chevers, Clerk.

68

At a stated term of the District Court of the United States of America, for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday the 10th day of December, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Ogden Hoffman, district judge.

69 *Order of default.*

THE COAST WRECKING CO. OF N. Y.
vs.
MATERIALS, MACHINERY, etc., of the Camanche.

And now, at this day, on motion of proctor for libellants, it is ordered by the court that the default of claimants be, and the same is hereby, entered for want of answer.

Filed December 10th, 1864.

W. H. CHEVERS, *Clerk.*

70

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 12th day of December, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The honorable Ogden Hoffman, district judge.

71 *Order setting aside default.*

THE COAST WRECKING CO. OF N. Y.
v.
MATERIALS, MACHINERY, etc., of the Camanche.

And now, at this day, on motion of proctors for complainants, it is ordered by the court that the default of the said claimants heretofore entered herein be, and the same is hereby, opened and set aside.

Filed Dec'r 12, 1864.

W. H. CHEVERS, *Clerk.*

72

72 In the District Court of the United States in and for the northern district of California.

73 *Answer.*

THE COAST WRECKING COMPANY OF NEW York
vs.
THE MATERIALS, MACHINERY, TOOLS, &c., for constructing and equipping the iron-clad steam battery "Camanche."

To the honorable OGDEN HOFFMAN, judge of the District Court of the United States in and [and] for the northern district of California:

The claim and answer of Peter Donohue and James T. Ryan, of the city and county of San Francisco, California, and of Secor, of the city of New York, State of New York, intervening for their interest in the materials, machinery, tools, and other appliances of every description for constructing and equipping
74 the iron-clad turreted steam battery "Camanche," to the libel of Artemus S. Fletcher, as agent, and on account of the Coast Wrecking Company of New York, as salvors, against said materials, machinery, &c., of said iron clad steam battery "Camanche," allege as follows:

First. They claim the materials, machinery, tools, and other appliances of every description for constructing and equipping the iron-clad turreted steam battery "Camanche," and state they are the true any bona fide owners thereof, and that no other person is the owner thereof.

Second. These claimants, in answer to first article of said libel, admit the sinking of the ship "Aquila" with a portion of her cargo on board alongside of Hathaway's wharf, in the harbor of San Francisco, but they aver that said vessel only partially sunk.

They deny that said cargo was in such mass, or of such peculiarity of construction, or was so stayed or so stowed as to render it
75 difficult or perilous to discharge the same from said ship under the most favorable circumstances.

They admit that after said ship had partially sunk she lay upon a shelving beach with a list off shore; but they deny that her bow was sunk in forty-eight feet, or in any greater number of feet than forty feet, of water at high tide, and they aver that her stern on the port side was out of water as far as the afterpart of the main channels.

They deny that the mud or filth which accumulated in said vessel after she so partially sunk rendered it exceedingly difficult to lay hold of, or to free or discharge her cargo.

They deny that more than two attempts were made to raise said vessel and save her cargo previous to the services rendered her by libellants. And they aver that a correct account of said two attempts, and of their respective success, is hereinafter set forth.

76 They deny that the mechanical or scientific skill or practical experience of the community were centred upon said vessel in the hope of, or for the purpose of devising means of rescuing the cargo from destruction or abandonment to the winds and waves.

Third. And as a further answer to the materials set forth in the first article of said libel, these claimants say:

That the ship "Aquila," with a cargo consisting of the materials, machinery, tools, &c., for constructing and equipping the monitor "Camanche," and also two cannon, five hundred shot, and five hundred shell, sailed from New York on the 29th May, 1863, and arrived at San Francisco on the 10th November, 1863; that the materials, machinery, plats, &c., for said "Camanche" were shipped on board said "Aquilla" in many hundred separate pieces, suitable for stowage;

77 that said "Aquila" came to anchor in the harbor of San Francisco on the 10th November, 1863, and there remained until the 14th November, 1863, on which last day she was moved and moored off Hathaway's wharf, Rincon Point, in said harbor; that on the 15th November, 1863, said ship Aquila was brought alongside of said Hathaway's wharf, and was properly secured thereto by hawsers, chains, ropes, and fenders, and was so docked with her stern in shore and her bow off shore, and pointing about northeast, and that said wharf was on her port side; that during the night of said 15th November it blew hard from the southeast, which occasioned a bad sea and caused the afterpart of said Aquila to strike the bottom, and so that the water forced itself through the ceiling or skin of the ship; that thereupon her pumps were manned and kept working for several hours; but the water gaining, and at one o'clock a. m.. being nearly up to the lower deck, and the ship filling fast, the pumps were abandoned; that

78 thereupon the master of said vessel got out her anchor chain, unshackled it, and lashed it to her mainmast, and then carried it ashore and fastened it to the piles of said Hathaway's wharf, in order to keep said Aquila, then about to sink, close to said wharf, and from falling off into deep water; that about three o'clock a. m. of the 16th November, 1863, said Aquila sunk, but so that she lay within a list of about 35° to the starboard, and with her stern on the port side out of water as far as the afterpart of the main channels, the aforesaid anchor chain holding her and preventing her from drifting out into deep water; that thereafter, and previous to the services of libellants, an attempt was made, under the direction of Captain Artemus T. Fletcher, as agent of the New York underwriters. to pump out said Aquila by means of steam pumps; that after preparations said pumping was commenced on the 3d December, 1863, but proved unsuccessful;

79 that previous to last-mentioned date the master of said vessel, acting in concert with said Captain Artemus T. Fletcher, cut, at low tide, an opening into the cabin deck and main deck of said Aquila, abaft, and through this opening in these two decks thus made took out some seventy tons of the cargo of said Aquila, consisting of materials and machinery for said Camanche; that on the 2d January, 1864, the master of said vessel and said

Captain Artemus F. Fletcher made an agreement with a third person to put some fifteen chains under the keel of said Aquila for three thousand dollars, payable in case of success, but in case of failure nothing to be paid; that said third person worked at said job for about a week, but unsuccessfully and then abandoned; that the two afore-recited attempts towards raising the Aquila or saving her cargo made previous to the services now claimed for by libellants.

80 Fourth. These claimants in answer to the second article of said libel say:

They admit that libellants rescued from said Aquila all the materials of said Camanche remaining on board of said vessel at the time the same was taken charge of by them, but they aver that some seventy tons thereof were saved, as hereinbefore set forth, previous to any services by libellants.

They deny, according to their information and belief, that the sub-marine divers of libellants labored with extreme peril of life or limb on the contrary, they aver that their diving operations were not as dangerous or as laborious as sub-marine diving usually is.

They deny, according to their information and belief, that the sub-marine labors alleged in said second article were attended with prodigious exertions or prodigious exposure or imminent peril.

81 They aver that the whole force used by libellants in performing the services in question consisted of about fifteen men, under the command of one Captain Merritt; that of these there was one foreman, one engineer, four divers, and the rest ordinary workmen.

Fifth. These claimants for answer to the third article of said libel say: They deny that the labors or exposure or perils of libellent, or of their employees, were extraordinary or hitherto unheard of. The deny, according to their information and belief, that but for the labors and perils and assistance of libellants and their agents and servants, the materials, machinery, tools, and other appliances for the constructions and equipping of said Camanche, or any of them would have been utterly lost; on the contrary, they aver, without intending to depreciate the meritorious services rendered by libellants and their employees, could have been found to perform all the services now claimed for in this action.

Sixth. These claimants further allege, that they were, during the times herein referred to, and whilst the services

82 mentioned in the libel were being rendered, the true and bona fide owners of the said ship Aquila, her tackle, apparel, and furniture, and that no other person was the owner thereof; that said Aquila was, at the time she sunk, at Hathaway's wharf, as aforesaid, a good staunch first-class vessel of eleven hundred and nineteen tons register, thoroughly equipped and of the value of sixty thousand dollars.

That the salvage services of libellants was rendered to the materials, machinery, &c., of said Camanche while on board of said ship Aquila; that in rendering such salvage service, libellants and their employees paid but little, if any, regard to the great damage they occasioned to said Aquila, and in performing such service, in-

flicted serious and lasting injury upon said Aquila, her tackle, apparel, and furniture, namely, by causing the loss of her forecastle cabin deck, by cutting away, at various times, large portions
83 of her main deck, and of the beams and stancheons of said deck; by cutting away the partner beam of his mizenmast; by cutting away the cross trees of her foretop; by breaking and cutting away large portions of her rail and bulwarks; by ripping up the comings of her forward hatch; by chafing and injuring her masts; by destroying her sails; by cutting away her main and main topmast stays; by cutting away two of her foreshrouds; by cutting away her foretopmast backstays; by otherwise cutting and injuring her running and standing rigging; by straining her and raising her, and in efforts to raise her for the purpose of extricating said cargo throughout her entire construction.

That said ship, Aquila, after being raised by libellants was also sold at public auction, and in consequence of aforesaid injuries so inflicted by libellants only realized the sum of five thousand dollars.

That the value of the salvage service rendered by libellants
84 and claimed for in this action is greatly diminished, by reason of the serious injury and great damage to said Aquila, her tackle, apparel, and furniture, occasioned by the actings and doings of libellants and their employees in the course of the rendition and performance of their said services.

Seventh. These claimants further allege, that, at the time of the aforesaid sinking of said Aquila, the materials, machinery, &c., of said Camanche were insured in the various insurance companies in the United States, and that these companies have heretofore settled with, and paid, libellants for their said salvage services as to thirteen-sixteenth (13-16) of said materials, machinery, &c., of said Camanche, leaving libellants unpaid for their salvage services only as to three-sixteenth (3-16) of said materials, machinery, &c., for said Camanche.

Eighth. That all and singular the premises are true.

Wherefore these claimants pray that this honorable court
85 would be pleased to pronounce upon the amount due to libellants for their said services, and otherwise law and justice to administer in the premises.

PETER DONAHUE,
H. H. McALLISTER,
Proctors for Claimants.

Subscribed and sworn to before me this 13th day of December, A. D. 1864.

W. H. CHEVERS, *U. S. Com.*

It is hereby stipulated that the default, as to claimants herein, heretofore entered in this action, be vacated, and that claimants be allowed to file to day this answer as in time.

December 13th, 1864.

W. H. L. BARNES, *Proctor for Libellants.*

Filed Dec. 13th, 1864.

W. H. CHEVERS, *Clerk.*

86

87 District Court of the United States northern district of California.

Stipulation.

THE COAST WRECKING COMPANY OF NEW YORK
vs.
MATERIALS, &C., OF THE CAMANCHE.

In this cause it is agreed by and between the parties hereto, as follows:

1st. That the examination of James T. Ryan, a witness for claimants, which was commenced in San Franscisco, may be completed in both its branches, direct and cross in the city of New York.

2nd. That Israel J. Merritt and Pool, witnesses for libellants, may also be examined in the city of New York.

3rd. That the examination provided for in articles 1 and 2 of this agreement shall be taken before John K. Hackett, esq., counsellor-at-law, or in his stead before any commissioner for the State
88 of California, in said city of New York, on a written notice of five days, specifying the time and place of taking the same, and the officer before whom it is to be taken, and the names of the witnesses to be examined. Such notice may be served on the libellants, or either of the claimants, Messrs. Donahue, Ryan, and Secor, as the case may be, in New York city. The examination shall be on written interrogatories whenever required by either party, and the deposition of each witness, when returned into this court by the officer having taken the same, (annexed to this agreement,) may be read in this cause with the like force and effect, in all respects, as if the witness had been examined in open court, subject to all legal objections, except only as to the mode of taking the same, and to the form of an interrogatory, which latter objection (as to the form of an interrogatory) shall be deemed waived, unless taken at the time of propounding such interrogatory.

89 Signed in duplicate.

San Francisco, April 26, 1865.

H. & Co. McALLISTER,
Proctor for Claimants.
WILLIAM H. BARNES,
Proctor for Libellants.

Endorsed: Filed May 2d, 1865. Geo. C. Gorham, clerk. By Dan'l T. Sullivan, dep'y clerk.

90

91 District Court of the United States, northern district of California.

Depositions Ryan et al.

THE COAST WRECKING COMPANY OF NEW YORK
vs.
MATERIALS, &C., OF THE CAMANCHE.

In this cause it is agreed by and between the parties hereto, as follows:

1st. That the examination of James T. Ryan, a witness for claimants, which was commenced in San Francisco, may be completed in both its branches, direct and cross, in the city of New York.

(Balance torn off.)

—cisco, April 26, 1865.

H. & C. McALLISTER,
Proctors for Claimants.
WILLIAM H. L. BARNES,
Proctor for Libellants.

92 United States District Court.

THE COAST WRECKING COMPANY
vs.
THE MATERIALS, &C., OF THE CAMANCHE.

I appoint Monday, the seventeenth day of July instant, at three o'clock p. m., at my office, number 82 Nassau street, in the city of New York, for the examination of James T. Ryan, and of such other witnesses as may be produced before me for examination under the stipulation between the parties herein.

Dated New York, June 13, 1865.

[SEAL.] JOHN K. HACKETT,
Commissioner.

To JAMES T. RYAN, or Messrs. DONAHUE and SECOR, (the other claimants herein, or either of them:)

93 GEN.: Please take notice of the above appointment, and that the examinations therein mentioned will be taken as therein appointed. Any communication you may wish to make to the libellants respecting the examination may be made to C. A. Hand, 51 Wall street, New York.

Dated New York, June 13, 1865.

W. H. L. BARNES,
Proctor for Libellants.
Per A. C. HAND.

94
95 District Court of the United States, northern district of California.

THE COAST WRECKING COMPANY OF NEW YORK
vs.
MATERIALS, &C., OF THE CAMANCHE.

In accordance with the foregoing appointment made by John K. Hackett, esq., James T. Ryan, accompanied by John E. Parsons, of counsel for the claimants, appeared at the time and place therein mentioned, and C. A. Hand, esq., appeared as counsel for the libellants, at the same time and place; and it then and there appearing that the said John K. Hackett, esq., could not proceed with the examination provided for in the stipulation hereto annexed, it was stipulated and agreed by and between the said Ryan and the said counsel that the examination of all the witnesses should be taken before Josiah Porter, esq., a commissioner for California, residing in
96 the city of New York.

Whereon the examination of the said James T. Ryan and also of Israel J. Merritt and William J. Poole was taken by the said commissioner, as appears by the schedules hereto annexed.

[SEAL.] JOSIAH PORTER,
Commissioner for the State of California
A. C. HAND,
For Libellants.

CITY AND COUNTY OF NEW YORK, *ss:*

Thomas Counskey, of the city of New York, being duly sworn, says that on this eighth day of July, eighteen hundred and sixty-five, he personally served the foregoing appointment and notice upon James Ryan, and in making such service, delivered to, and left with, said Ryan a true copy of said appointment and notice, at the city of New York, and which person so served was the same James T. Ryan in said notice mentioned.

THOS. COUNSKEY.

Sworn and subscribed this 8th day of July, A. D. 1865.
[SEAL.] FRANCIS S. JOHNSON,
Notary Public.

97 District Court of the United States, northern district of California.

Deposition of J. T. Ryan.

THE COAST WRECKING COMPANY
against.
MATERIALS, &C., OF THE CAMANCHE.

Deposition of witnesses produced, sworn, and examined at the city of New York, in the county and State of New York, on the 17th, 18th, 20th, 21st, 24th, and 28th days of July, 1865, and the first day of August, 1865, under and by virtue of the stipulations in the above-entitled action hereto annexed.

James T. Ryan, of San Francisco, California, builder, being duly and publicly sworn, and cross-examined on the part of the libellants, this seventeenth day of July, 1865, doth depose and say as follows:

Ques. Where do you reside?

Ans. San Francisco, California.

98 Ques. How long have you resided there?

Ans. I went to California in 1849, and remained there till 1861, (Josiah Porter, com'r for Cal.,) I came to New York in 1861; live in San Francisco part of the time, and Humboldt county part of the time, and in Sacramento City part of the time. I left New York for California in the fall of 1863, and returned to New York last February; my residence is still in California; I am temporarily absent from there.

Ques. What is your occupation?

Ans. A builder of houses, of mills and vessels, Monitors included. I have been in business for myself as a builder for 22 years.

Ques. Have you built vessels all that time?

Ans. I have; I have assisted in building four iron-clad ships in which I was interested, and one that I had no direct interest in.

Ques. When did you first build a ship?

Ans. In 1862; I was first interested in building new ships.

99 (Josiah Porter, com'r for Cal.)

Ques. When and where did you and your co-contractors buy the ship Aquila?

Ans. In the early part of 1863, in the city of New York.

Ques. Of whom did you buy her?

Ans. I don't recollect the parties names. I think the owners were from Bath, Maine. I think it was sold through an agent in New York. I don't recollect the name of the agent.

Ques. Was her register then changed into your names?

Ans. To the names of Donahue, Ryan & Secor.

Ques. Did you go to San Francisco in May, 1863, in the "Aquila?"

Ans. No.

Ques. Were you at San Francisco when she arrived there in November, 1863?

Ans. I was.

Ques. Were you there when she sunk?

Ans. I was, and on board the ship until a few minutes before she sunk.

Ques. By whose directions was the Aquila moored at Hathaway's wharf?

Ans. By direction of the pilot who had brought her from sea, and who had charge of her until she was moored at that dock.

Ques. Was any objection made by the owner of the dock or dock-master to her being moored there at any time, or to the way in which she was moored?

Ans. I heard no objection made by anybody on the day she was moored. The day before, when she was coming around to the dock the dock-master, (Josiah Porter, com'r for Cal.) said that he thought it was going to blow and that we had better anchor, which was done. It did blow heavily that night, and the ship dragged her anchor. Next day being calm, the pilot had her moored at Hathaway's wharf.

Ques. Did she get foul of any vessel when she dragged her anchor.

Ans. She did; she got foul of one vessel; the ship "Isca."

Ques. Did you give no direction or suggestion respecting the mode in which she was moored at the wharf?

Ans. I sent hay bales and directed the captain and pilot to have them used as fenders as an extra precaution in case of a blow. I gave no other direction than to tell the captain and pilot to have everything done in the best possible manner.

(Josiah Porter, Com'r for Cal.)

Ques. After the ship was moored and before she sunk, was objection made to you by the owner of the dock or dock-master relative to her having been moored at that time or with her bow to seaward.

Ans. There was none made to me. The vessel was moored Saturday or Sunday afternoon as soon as she came to the dock, and before she was moored, I left and went home and did not return till eight o'clock that evening.

Ques. When was the notice of abandonment given?

Ans. I think it was on Monday, the 16th, to Capt. Fletcher, the agent for the underwriter there. We telegraphed to our partner, Mr. Secor, in New York, the same day, to abandon to all the underwriters interested at the east.

Ques. Did you thereafter co-operate with Captain Fletcher in the efforts to save the property?

(Josiah Porter, Com'r for Cal.)

Ans. I did.

Ques. When, and in whose presence, did Capt. Merritt represent himself as the agent of the New York underwriters?

Ans. In Captain Fletcher's office, on more than one occasion; in the presence of Captain Fletcher and some others, whose names I do not recollect.

Ques. Where was the cargo landed as it was taken out of the Aquila?

Ans. Part of it was landed on Hathaway's wharf; parts on Rincon or Steamboat Point, near the foot of Third street.

103 Ques. This Steamboat Point is the place where the Camanche was constructed, is it not?

Ans. Yes.

Ques. Did the manifest purport to give any schedule of the (Josiah Porter, Com'r for Cal.,) materials of the Camanche.

(Question objected to on the part of the claimants on the ground that it asks the contents of a written paper.)

Ans. I don't know that ever I have seen the manifest. I don't think I have seen it.

Ques. What species of hydraulic power do you refer to in your direct examination.

Ans. To the hydraulic power that has been frequently used in the city of San Francisco for raising buildings much heavier than the ship and cargo.

(This answer objected to on the part of the libellant as not responsive to the question.)

Ques. Is it hydraulic jacks that you mean?

104 Ans. I mean hydraulic rams.

(Josiah Porter, Com'r for Cal.)

Ques. When did you give notice of the withdrawal of your abandonment.

Ans. I telegraphed to our partner in New York about the 12th July, 1864, to withdraw the abandonment, and immediately on that entered into the possession of the vessel and commenced to build her.

Ques. Were you at San Francisco during all the period between the sinking of the vessel and this time in July, 1864?

Ans. I never was absent during that period for more than part of a day at any one time, except on one or two occasions, when I was absent a few days.

Ques. Where does Mr. Donahue reside?

Ans. In the city of San Francisco.

Ques. Where does Mr. Secor the other co-contractor reside?

(Josiah Porter, Com'r for Cal.)

Ans. In the city of New York.

105 Ques. Where is the office of Donahue, Ryan and Secor?

Ans. We had an office in San Francisco; we transact our business now in Mr. Secor's office, in Jersey city.

Ques. Did you, in person, keep the books of your concern?

Ans. No.

Ques. Did you purchase for the government the guns, shot, and shell which were aboard the Aquila?

Ans. No.

Ques. Do you know whether they were purchased or manufactured by the goverment?

Ans. I don't know anything about them prior to their being delivered to us by the government at the navy yard in Brooklyn.

(Josiah Porter, Com'r for Cal.)

Ques. Where do Fell & Eaton, referred to in your direct examination, reside?

Ans. In San Francisco.

Ques. Where, and in whose presence, was the conversation
106 referred to by you in your direct examination, in which the names of Fell & Eaton were mentioned?

Ans. I think it was in Captain Fletcher's office, soon after Captain Merritt arrived there. I don't recollect in whose presence.

Adjourned to July 18th, 1865, at 2 o'clock, p. m.

The said James T. Ryan, being further cross-examined on the part of the libellants, this 18th day of July, 1865, doth depose and say as follows:

Question. How doth Hathaway's wharf lie?

Ans. It is the most southern dock for large ships in San Francisco. There is sufficient water at the sides for small vessels, and at the side where the Aquila lay for large vessels. It presents two sides to the water. The Aquila lay on the south side of the dock.

107 Ques. How was the Aquila moored to the dock? was the stern out to seaward or the bow?

Ans. The bow was seaward.

Ques. Prior to the arrival of Capt. Merritt at San Francisco was an attempt made to pump out the ship?

Ans. Yes.

Ques. After his arrival did you suggest to him the idea of using India rubber bags to raise the ship.

Ans. I suggested India rubber bags as one of the modes to raise the ship. I don't recollect whether (Josiah Porter, com'r for Cal.) to him or not.

Ques. Was one of your boss carpenters named Patterson?

Ans. I hired a man for that purpose but discharged him before he directed any work; he had done some journey-work; I discharged him before I began to build up the ship.

Ques. In what month, and where, did you discharge him?

Ans. I don't recollect what month; it was before July,
108 1864. It was in San Francisco.

Ques. Did he offer to put up the frame of the Camanche after it was saved for four thousand dollars, or thereabouts.

Ans. I never received any offer from anybody to do that work by contract.

Ques. In or about the time of giving your notice of abandonment, did you state that you were willing (Josiah Porter, com'r for Cal.,) to contribute your services towards saving anything possible from the wreck.

Ans. I don't recollect having seen the notice, but I stated frequently to the agent that I was willing to do anything I could to save the property; by agent I mean Capt. Fletcher.

Ques. Who acted as government superintendent while the property was being landed at the foot of Third street.

Ans. I don't think the government had anything to do with it at that time, although the person appointed by the government
109 to superintend the construction was frequently there, his name is Tonel—volem.

Ques. Was the Aquila surveyed after her wreck?

Ans. She was.

Ques. By whom?

(Josiah Porter. com'r for Cal.)

Ans. By Capt. Roxbury, Noyes, another captain, and two ship carpenters, whose names I don't now recollect. There were several surveys had on the ship at different times.

Ques. Upon what valuation of the materials of the Camanche did you obtain your insurances?

Ans. The valuation was four hundred thousand dollars, embracing all the materials, tools, &c., which the claimants had on board the Aquila.

Ques. As the property was landed at the foot of Third street, was it cleaned and oiled?

Ans. It was cleaned, and portions oiled.

The said James T. Ryan, being further examined on the
110 part of the claimants, doth depose and say, as follows:

(Josiah Porter, com'r for Cal.)

Ques. Was the man Patterson enquired about in your cross-examination sufficiently responsible, in your judgment, to perform a contract for putting up the frame of the Camanche?

(Objected to on the part of libellants.)

Ans. I don't think he was; he had neither the means nor the tools to do the work in San Francisco. In my judgment, he did not possess the necessary skill to perform that kind of work.

Ques. Why did you discharge him?

(Objected to on the part of libellants.)

Ans. Because I concluded he would be an annoyance instead of a benefit to me. I believe he thought himself more competent than I did.

Ques. Could Capt. Merritt, in your judgment, have raised the Aquila as she lay sunk without first discharging any of her cargo?

111 (Josiah Porter, com'r for Cal.)

(Objected to on the part of the libellants as not in rebuttal of anything elicited by the cross-examination.)

Ans. From what I have seen him do, I believe he could.

Ques. By this, do you mean that he could have done it in one of the modes mentioned by you in this examination?

Ans. I mean that the mode he adopted for raising the ship finally on a little larger scale have answered the purpose.

JAMES T. RYAN.

Examination taken and reduced to writing on the 17th and 18th days of July, 1865, and by the witness subscribed and sworn to, this 18th day of July, 1865, before me.

JOSIAH PORTER,
Commissioner for California.

112 District Court of the United States, northern district of California.

Deposition of Wm. Poole.

THE COAST WRECKING COMPANY
against
MATERIALS, &c., OF THE CAMANCHE.

William J. Poole, of Keyport, in the State of New Jersey. wrecker. being duly and publicly sworn and examined on the part of the libellants, the 18th day of July, 1865, doth depose and say, as follows:

Ques. What is your age, residence, and occupation?

Ans. Age, 35 years; residence, Keyport, New Jersey; occupation, wrecker.

Ques. How long have you been a wrecker?

Ans. Going on eleven years.

Ques. Has that been your sole business during that time?

(Josiah Porter, com'r for Cal.)

113 Ans. It has.

Ques. In and from what port?

Ans. New York.

Ques. Where have your wrecking services been performed?

Ans. On the Atlantic, as far east as Massachuseets, as far south as South Carolina. I have had no service on the Pacific, except the Camanche.

Ques. On what kind of wrecks have your services been performed?

Ans. On all kinds.

Ques. What is your rank or position in the wrecking service?

Ans. Assistant agent of the Coast Wrecking Company.

(Josiah Porter, com'r for Cal.)

Ques. Were you one of the party sent to San Francisco by that company in the latter part of 1863 to attempt to raise the Camanche?

Ans. I was.

Ques. Who commanded the party, and of whom did the party consist?

Ans. Capt. Israel T. Merritt commanded the party; and the
114 party consisted of myself, one clerk, named Frank E. Welch, four first-class divers, and six wreckers, and one engineer.

Ques. Did you take any apparatus with you?

Ans. We did.

(Josiah Porter, com'r for Cal.)

Ques. What apparatus?

Ans. Diving apparatus, hydraulic jacks, steam hoisters, steam pumps.

Ques. When did you leave New York?

Ans. We left on the 24th December, 1863.

Ques. Did all the party go together?

Ans. It did.

Ques. By what conveyance?

Ans. By steamer.

Ques. When did you reach San Francisco?

Ans. On or about the 18th day of January, 1864.

(Josiah Porter, com'r for Cal.)

Ques. When did you commence work upon the wreck?

Ans. On the same week that we arrived there, the latter part, I think. We arrived on Sunday, and went to work on Thursday.

115 Ques. Where did you find the wreck?

Ans. Sunk at Hathaway's wharf, in the bay of San Francisco.

Ques. Describe the position in which she laid?

A. She lay along the face of the southeast side of the wharf, about ten feet from it, about two-thirds of her length lapping on the wharf, and the remaining third beyond the wharf, in the bay. By lapping on the wharf, I mean that the ship extended about one-third (Josiah Porter, com'r for Cal.,) of her length beyond the wharf into the bay, her head lying in fifty feet of water, and her stern in about eighteen feet of water, and listed badly to the starboard; her bow lying where the full force of the current swept over it. There was but a small portion of the ship showing above water. The port quarter showed above water forward to her main chains, so that taking a line across to her starboard bumpkins would show the water line as she

116 then lay.

Ques. On the starboard side of the wreck, was she protected by any pier or wharf, or was she exposed to the open bay?

Ans. She was exposed to the full force of a southeast gale, which has a rake of about thirty miles.

Ques. As she laid, was she exposed to the tides?

(Josiah Porter, com'r for Cal.)

Ans. That portion of her which projected beyond the dock was on the flood tide and the whole of her on the ebb tide.

Ques. How did you find the rigging?

Ans. That which was under water was badly spoilt. The ship was stripped down to pretty much everything, except the standing rigging, I think.

Ques. How did you find the hatches?

Ans. The hatches were open.

Ques. Was there a hole through her cabin?

Ans. The top of the house was cut off, and there was a hole

117 (Josiah Porter, com'r for Cal.,) down through the deck.

Ques. How large was this hole?

Ans. About six feet square.

Ques. What did you proceed to do?

Ans. The first thing we done was to get derricks up, to lift out the cargo; then we proceeded to take out the cargo by the aid of divers. The diver would go down under water and fasten our "purchases" to a piece of iron, and then he would signal it was all right, after which we hoisted it out by steam. After he has signalled it was all right, he got out of the way, and stayed there until he was signalled from above that it was all right, and then he would look up another piece and make fast to it. That was the process we used in lifting out the cargo.

(Josiah Porter, com. for Cal.)

Ques. From what part of the ship did you begin to take out your cargo?

Ans. From the after part of the ship; through the hole that was already made in her deck. We took it first from between
118 decks.

Ques. Did you proceed to the bow, taking out all the cargo between decks?

Ans. We did, taking out clear as we went along.

Ques. From what part of the ship did you next remove the cargo?

Ans. After getting the cargo between decks out, we commenced in the lower hold. I think we commenced in the after hatch and worked forward as we did between (Josiah Porter, com. for Cal.,) decks, taking out the cargo piece by piece.

Ques. What did you do with the cargo as it was taken out?

Ans. Delivered it on lighters, which landed it at the foot of Third street.

Ques. Can you describe the pieces of cargo which were first taken out?

Ans. They were plates of iron of about four feet by six, and from half an inch to an inch in thickness. Also, the frames of the ship—
they were long, crooked pieces of iron, difficult to handle; the
119 floor timbers, which were of an irregular shape, of iron, some of them very heavy and very long; the iron for the turret, a circular iron about four feet broad by seven feet high, and an inch in thickness; there were about half a dozen to a dozen (Josiah Porter, com. for Cal.) small engines in her; also the main engine, in pieces; there were a large quantity of tools, and the machinery for a machine shop. There was about four or five hundred tons of oak timber; and also shot and shell.

Ques. When was the timber taken out?

Ans. The oak timber was taken out after the ship was raised. The pine timber, which bothered our divers very much, had to be taken out at the time we were taking the iron out.

Ques. When did you finish getting out the cargo in this way?

Ans. I think it was in the last of April, 1864.

(Josiah Porter, com. for Cal.)

Ques. How steady did you work at it during this time?

120 Ans. We worked steadily from Monday morning till Saturday night, late and early.

Ques. Did you employ additional men at San Francisco?

Ans. We did; we had from five to fifteen additional men.

Ques. Did you obtain additional apparatus there?

Ans. Not for getting the cargo out. We built eight pontoons there.

Ques. After taking out all the cargo you did by divers, what next did you did?

Ans. We then proceeded to raise the ship up, by the use of chains, putting them (Josiah Porter, com. for Cal.) under her, in which attempt we failed, as the ship's bow rested so heavily on a rock the

divers found it impossible to get the chains by it, after working at least two days at it. We then found that we had to take hold of the ship's top to raise her sufficiently to let the chains pass between her and the rock.

Adjourned to Thursday, July 20, 1865, at 11 o'clock, a. m.

121 On Thursday, July 20th, 1865, after beginning the examination of Israel J. Merritt, adjourned to Friday, July 21st, 1863; and Friday, July (see orig.) 1st, 1864, after proceeding with the examination of Israel J. Merritt, adjourned to Monday, July 24th, 1865; and on Monday, July 24th, 1865, after proceeding with the examination of Sarah J. Merritt, adjourned to Friday, July 28th, 1865; and the 28th day of July, 1865, after proceeding with and concluding the examination and cross-examination of Israel J. Merritt, the said William J. Poole, being further examined on the part of the libellants, doth depose and say as follows:

Question. State, as briefly as you can, and in general terms, the process by which you raised the vessel.

(Josiah Porter, com. for Cal.)

Ans. By taking hold of the top of the ship and lifting her by means of pontoons, hydraulic jacks, and chains. In this way
122 we lifted her bows sufficiently to get chains under her. After which we dropped the chains from the top of the ship. Then by means of the chains we had got under her, and pontoons and hydraulic jacks, we raised and finally worked her up on the flats. We had eight chains on the ship, divided along the whole length of the ship.

Ques. In the course of raising the ship, were any of the deck beams broken? and if so, by what was it occasioned?

Ans. They were. I cannot account for it in any other way than that the strain was too great; the parts that we took hold of were not strong enough for the strain that was on them.

(Josiah Porter, com. for Cal.)

Ques. How was the strain occasioned?

Ans. Partly the weight of the ship being too much for
123 them, and partly a barque or ship drifting down upon them. I do not mean to say that they would have broken without the additional strain from this barque or ship.

Ques. To what part of the ship's top were your chains thus attached?

Ans. Around the end of the beams nearest the sides, and also around the ends of the hanging knees.

Ques. Why were the chains attached to this part of the ship?

Ans. Because it was considered the strongest part to take hold of.

(Josiah Porter, com. for Cal.)

Ques. At the time the ship was raised, to what extent had the cargo been taken out of her?

Ans. Pretty much all of the iron work of the ship, with the exception of the boilers, some water tanks, scattering pieces of plating, and pretty much all of the oak timber belonging to the Camanche.

I mean that the oak timber, for the most part, had not been taken out.

124 Ques. Can you give an estimate of the weight of the wreck at the time you commenced work upon her?

Ans. I can only give an estimate of the weight of the Camanche, from what I heard. I would not like to give an estimate of the weights.

Ques. What, in your opinion, was the degree of skill and care (Josiah Porter, com. for Cal.) with which the service was performed?

Ans. I think there was as much precaution taken in getting out the cargo as could have been used by anybody in getting it out with divers.

Ques. Do you know of any other mode than by divers, in which the cargo could have been taken out of the ship in the position in which she lay?

Ans. I do not.

Ques. What was the character of the service in regard to personal danger?

Ans. I looked upon it as a very dangerous and risky piece
125 of work for the divers to perform.

Ques. What precautions were taken to prevent injury to the cargo in recovering it?

(Josiah Porter, com. for Cal.)

Ans. The divers were instructed to always take hold of the top pieces, and be sure they were all clear before signalling to go ahead. The engineer was also instructed to start the engine slow. Whenever he or the one tending the diver found it was liable to be caught fast, the engine was stopped. Sometimes we would slack down and then go ahead slow on it, and it would oftentimes come clear; if it did not, the diver was signalled that it was foul. He would then go to it, and find out what the trouble was; and if he found it would not come where it was made fast, he would make fast to it in another place.

Ques. Who superintended the service?

126 Ans. Capt. Merritt was the general superintendent. I assisted in superintending it, and took Capt. (Josiah Porter, com. for Cal.) Merritt's place in his absence.

Ques. What was the degree of constancy and particularity of this superintendance?

Ans. It required our attention the whole time, and had it.

Ques. What was the degree of difficulty in removing the cargo from the ship?

Ans. The cargo had been put in with a great deal of care; stowed in close. We had to be particular, and it took us a long time to find out which was the right piece to take out of her. The divers encountered a great deal of floating timber, which interfered with them. I believe that was the only serious difficulty we encountered. The plating came right along when we got it started, until we got to the pieces of frame, then the (Josiah Porter, Com. for Cal.) divers would be bothered in getting them entered in the hatchway

127 in some cases. They were also bothered with the high floors, and some of the larger ones; it took about all the room we had in the ship to get them out.

Ques. How did the position of the ship and the kind and mode of stowage of the cargo compare with other wrecks, as to the extent of difficulty in removing the cargo, and the skill required to do so?

(The counsel for the claimants objects to the form of the question, on the ground that there is no evidence about other wrecks, and if there were, the comparison would not be proper.)

Ans. I have never seen a cargo of that kind in any other ship. I think the cargo was more difficult to get out than any other cargo I have (Josiah Porter, com'r for Cal.) ever seen; it required a great deal of skill to get it out; it required experienced divers.

128 Ques. In your opinion, was it practicable to have raised the ship and cargo altogether?

Ans. My experience has taught me that the cheapest and best mode was to take the cargo out first, and raise the ship afterwards. In an ordinary light job we would take the whole thing up, but in a heavy job it is best to take the cargo out, if possible.

Ques. What, in your opinion, were the objections to endeavoring to raise both ship and cargo together, in this case?

Ans. I don't know that a sufficient number of chains could have been found in the city to raise the ship, even if it could be done; and if they could have been found there would not have been room (Josiah Porter, com'r for Cal.) enough between the ship and the deck to use the necessary pontoons or hulks without removing the dock, or a strip of it, alongside the ship.

Ques. Have you finished your answer?

Ans. Yes.

129 Ques. What, in your opinion, would have been the degree of risk of failure and delay in attempting to raise them together?

Ans. I think it would have taken much longer than in the manner in which it was done. From what engineers say, the machinery would have been spoiled if it had remained under water much longer. I think the chances would have been very favorable for breaking down pretty often in attempting to raise that ship.

Ques. Would it not have been a better mode to have used India rubber bags to raise them?

(Josiah Porter, com'r for Cal.)

Ans. I think not. I have never seen India rubber bags used but three times, and at the expiration of that they were pronounced a failure, and thrown aside.

Ques. Who first applied hydraulic power as the motive power in raising vessels?

Ans. When I first went into the wrecking business, I saw it used.

130 Ques. Are you aware of any use of hydraulic power in the wrecking service otherwise than as the motive power for working the machinery?

Ans. I have seen it applied in various ways. It is always a motive power at last.

Ques. In your opinion, could hydraulic power have been applied to the saving of this wreck in any mode better or more effective than it (Josiah Porter, com'r for Cal.) was applied by you?

(The counsel for the claimants objects to the form of the question as leading and argumentative.)

Ans. I do not think hydraulic power could have been applied in any better way than we applied it.

Ques. Would it not have been advisable to have attempted to sink iron cylinders and bore holes under the ship, and thus get chains under it.

Ans. I have never seen it tried; I do not think it practicable; it would have consumed a great deal of time.

Ques. How would such holes have had to be made, if made?

131 Ans. By first sinking a perpendicular cylinder, I presume, and then tunnelling under the (Josiah Porter, com'r for Cal.) [under the] ship, and then striking a corresponding cylinder on the other side of the ship.

Ques. To what extent were the materials of the Camanche found to be injured when they were taken from the ship?

Ans. I can't tell as to the number of pieces bent or broken; I never kept any account of them; they may have averaged one in fifteen, or one in twenty; I think the principal things bent and broken were the ribs; there were also some of the pieces of the high floor bent.

Ques. Who directed and planned the salvage service throughout?

Ans. Captain Merritt.

Ques. What is his standing and reputation in the wrecking service? (Josiah Porter, com'r for Cal.)

Ans. I believe he stands at the head of the class here; second to none in the business; that is his reputation in New York;

132 I don't know how it is in other countries.

Ques. How steadily did the party work at the service from the time you commenced until you finished it?

Ans. Pretty much constantly, with the exception of Sundays. I think there was about three days lost time on account of wet weather. After we commenced raising the ship we worked night and day.

Adjourned to Tuesday, August 1, 1865, at 11 o'clock in the forenoon.

JOSIAH PORTER, *Com'r for Cal.*

On this first day of August, 1865, the said Wm. Poole, being cross-examined on the part of the claimants, doth depose and say, as follows:

Ques. For what wrecking company are you assistant agent?

Ans. The Coast Wrecking Company of New York, the libellants in this case.

Ques. Did your party not have from New York with you,

133 at San Francisco, a lantern, or other apparatus of some kind, to furnish the divers with light?

Ans. There was a lantern sent out from New York after we got there for that purpose. We tried it once and broke the glass; we never tried it afterwards; it was broken by the diver turning too much flame on.

(Josiah Porter, com'r for Cal.)

Ques. When you say that you found the hatches of the Aquila open, do you speak of the time you began work, or as to each hatch of the time you worked up to it.

Ans. The afterhatch we found open at the commencement of the work, the others as we reached them.

Ques. Did you employ additional divers at San Francisco?

Ans. We did.

Ques. How many, and at what rate of pay?

Ans. I think we tried four or five different ones, but only two answered our purpose and were retained by us. I am not positive about the pay; somewhere from ten to fifteen dollars per day.

134 Ques. When a piece of the Camanche fouled, or caught fast while being pulled (Josiah Porter, com'r for Cal.) out of the Aquila, who was the first to ascertain it?

Ans. Sometimes the diver; sometimes the engineer, and sometimes, perhaps, the man tending the diver.

Ques. Who, generally?

Ans. The engineer; he could tell quicker than any one else.

Ques. Was it the action of his engine that the engineer told?

Ans. It would be, sometimes; when it brought up solid the engine would tell him at once by stopping.

Ques. Was not the only means of information by the engineer either the engine or tackle, operated by the engine?

Ans. The man tending the pennet would sometimes tell the tender of the diver, who gave his (Josiah Porter, com'r for Cal.) instructions to the engineer; this, and the engine and the tackle, operated by the engine, were the only means of information the engineer had, unless the diver signalled.

135 Ques. Explain what the pennet was.

Ans. It is the strong rope which communicates between the tackle and the piece; we used four to four and a-half inch hemp rope, and for a few of the heavy pieces we used chains.

Ques. How were the staunchions which secured the cargo removed?

Ans. By hooking the pennet on to them and going ahead with the engine; if they would not come that way, we sawed them partly off.

Ques. Is the difference of weight the reason why in an ordinary light job of salvage you take the whole thing up, but in a heavy job you take out the cargo, if possible?

(Josiah Porter, com'r for Cal.)

Ans. Difference of weight and difference of time.

Ques. So your rule to take up the whole thing, if you are satisfied you can do it within a practicable time?

Ans. Yes.

136 Ques. What advantage is there, in your judgment, in taking up the whole thing together, when you can?

Ans. When we take up the whole thing, we do it because it is cheaper to do it that way, and we get through with the job quicker.

Ques. How is it cheaper?

Ans. It requires less labor, and that is the principal item; sometimes there is a saving on the cargo; sometimes there is a saving on the vessel.

(Josiah Porter, com'r for Cal.)

Ques. Did you not raise the vessel, when you did raise her by pontoons, placed in part between the deck and the vessel?

Ans. Yes; after her head swung away from the dock.

Ques. Was there then room enough outside the dock for the pontoons necessary on that side of the Aquila to start her?

Ans. There was room enough to put two pontoons on that side of the Aquila.

Question repeated.

Ans. There was room enough, but the pontoons were built
137 to fill the space we had to work them in between the dock and the ship.

Ques. Was there any limit of space on either side for the pontoons with which you did actually swing off the bow of the (Josiah Porter, com'r for Cal.) Aquila?

Ans. Not when we took hold of the bow of the ship and swung that off.

Ques. Have you any means of stating how long it would have taken to get chains under the Aquila, by sinking iron cylinders and boring holes under the ship?

Ans. I have no means of stating how long it would have taken.

Ques. Was not the season during which you were engaged in salving the vessel and cargo, with rare exception, clear, pleasant and bright, fine weather?

Ans. It was, with the exception of a few days.

(Josiah Porter, com'r for Cal.)

The said William J. Poole, being further examined on the part of the libellant, doth depose and say, as follows:

138 Ques. Was the season of the year at which you commenced work the season when it is ordinarily good or bad weather?

Ans. It was the beginning of the bad season of the year.

Ques. Had you the right to expect, from ordinary experience, clear and quiet, or cold and stormy, weather at that season?

Ans. It was the season of the year when we would expect cold and storms, and disagreeable weather to work.

Ques. Describe how it would be necessary to put holes under the ship in case that had been attempted?

(Josiah Porter, com'r for Cal.)

Ans. By sinking perpendicular cylinders, and then tunnelling through under the ship.

Ques. Would the list of the ship made any difference with regard to the difficulty of such an attempt?

Ans. Nothing more than we would have to bore further.

Ques. Was there any difference in the space required for pontoons to raise the ship at the time you raised her and the
139 space which would have been required if you had attempted to have raised her at first?

Ans. There was; a part of the port-side of the ship was within twelve feet of the dock, and there was not room to get pontoons in there necessary to raise the ship with that (Josiah Porter, com'r for Cal.) weight in her.

Ques. Would you have considered it safe to lift the ship by the bow only, with the weight that was in her when you began?

(Counsel for claimants objects to form of question, as leading.)

Ans. No.

Ques. What interest do you consult or regard in determining whether to attempt to lift a wrecked ship and cargo together, or take the cargo out first?

Ans. The interest of all parties concerned.

Ques. Is there any difference or risk to be considered in
140 deciding which course to adopt?

Ans. There is.

(Josiah Porter, com'r for Cal.)

Ques. Is that one of the points of consideration?

Ans. It is one of the principal points to be taken into consideration.

(The last question objected to by counsel for claimants for form, as leading.)

Ques. Describe the staunchions which you have spoken of as having removed, and their uses and position.

Ans. The staunchions were joists, from three by four, to four by six, one end resting under the deck-beams and the other on the cargo, or flooring over the cargo, in different angles and different positions, as circumstances required; some of them were tied together by plank braces, or ties; the staunchions were to secure the cargo and keep it from shifting.

(Josiah Porter, com'r for Cal.)

Ques. Why were they removed?

141 Ans. In order to free the cargo, so that could take it out.

Ques. In what mode was it practicable to remove them?

Ans. By putting a pennet on and pulling them out of the way; the diver could cut them off with a saw under water, but that would take too much time.

Ques. What different persons watched whether the piece got foul or not?

Ans. The diver, the engineer, the man tending the pennet, and the man tending the diver.

Ques. What means had the man tending the pennet of knowing whether a piece was foul or not?

(Josiah Porter, com'r for Cal.)

Ans. By keeping his hand on the pennet all the time he could tell at once whether the piece struck anything.

Ques. In what mode was the engine stopped by a piece getting foul?

Ans. Sometimes by its own accord, sometimes by the man tending the diver; when it stopped of its own the revolutions
142 of the engine stopped.

Ques. What was done by the engineer when the engine thus stopped?

Ans. He shut the steam off.

Ques. Did all the divers taken out by you, and those employed by you at San Francisco, remain with you throughout the work?

Ans. Some of those tried at San Francisco did not, as I have testified (Josiah Porter, com'r for Cal.) in my cross-examination; the rest remained with us.

Ques. Did you receive any divers from the eastern coast while you were at work?

Ans. We had one sent out to us from Boston; he was a first-class diver, so recommended to us.

Ques. Did he remain with you?

Ans. He did not.

Ques. Why?

Ans. He objected to working there; he quit after making two dives.

Ques. How was the lantern that was sent out to you kept lighted under water?

143 Ans. By a constant supply of fresh air, forced through a tube by an air-pump; there was also an escape-pipe to (Josiah Porter, com'r for Cal.) carry off the gas and smoke.

Ques. Did you attempt to replace the glass after it was broken?

Ans. We did.

Ques. With what success?

Ans. We could not get a glass in San Francisco, and we could not get a white glass made there.

Ques. Is this lantern a new invention, recently brought into use?

Ans. It is.

Ques. Has its use in the wrecking service been sufficient to determine whether the advantages, compared with the machinery of it, render it a substantial assistance?

Ans. I have been told by parties who have used it that it is. (Josiah Porter, com'r for Cal.)

Ques. With what degree of rapidity and safety to the cargo were the pieces of the Camanche removed in this case?

144 Ans. With all possible speed that we could; I don't think any set of divers could have got it out faster or with less injury.

W. J. POOLE.

Examination taken and reduced to writing on the 18th and 28th days of July, and the 1st day of August, 1865, and by the witness subscribed and sworn to this 1st day of August, 1865, before me.

JOSIAH PORTER,
Commissioner for California.

145 District Court of the United States, northern district of California.

Deposition of I. T. Merritt.

THE COAST WRECKING COMPANY
vs.
MATERIALS, &C., OF THE CAMANCHE.

Israel T. Merritt, of Whitestone, Long Island, State of New York, wrecker, being duly and publicly sworn, and examined on the part of the libellants, the 20th day of July, 1865, doth depose and say, as follows:

Question. Where do you reside?

Ans. Whitestone, Long Island.

Ques. What is your age and occupation?

Ans. Thirty-six next month; my occupation is raising sunken vessels and getting stranded vessels off the shoals and coast—assisting shipwrecked property.

Ques. How long have you been (Josiah Porter, com'r for Cal.) engaged in this occupation?

146 Ans. Twenty years past.

Ques. Has it been your sole business during that time?

Ans. It has.

Ques. Where have your services been performed, and on what species of wrecks?

Ans. From Cape Cod to Tybee Island; at the mouth of the Savannah river, and on several inland rivers; on iron steamships, wooden steamships, sailing ships, barques, brigs, schooners, and canal boats. I assisted in raising one large ship in San Francisco harbor; that is the case in question.

Ques. In and from what port has your service been performed.

Ans. New York.

Ques. Did you sail in December, (Josiah Porter, com'r for Cal.) 1863, from New York for San Francisco in command of the party sent by The Coast Wrecking Company to assist the Camanche?

Ans. I did.

Ques. Of whom did the party consist?

147 Ans. Myself, Capt. Poole, as assistant, one engineer, four divers, five men, and one clerk.

Ques. Did you take out apparatus with you?

Ans. I did.

Ques. Who selected the party?

Ans. I did.

Ques. From where did you select them?

Ans. From Boston, Providence, and New York.

(Josiah Porter, com'r for Cal.)

Ques. For what did you select them?

Ans. For divers, engineers. I have given their special departments.

Ques. I mean with what degree of skill and experience in the wrecking service.

Ans. Because they were the most practical men that I could get hold of or could find; they were first-class men; the best men I could get.

Ques. When did you arrive in San Francisco?

Ans. On Sunday. I think the 17th day of January, 1864.

Ques. The party with you?

Ans. Yes.

148 Ques. When did you receive possession of the wreck?

Ans. I think it was on the 23d of the same month.

(Josiah Porter, com'r for Cal.)

Ques. What was then the position of the wreck?

Ans. Listed to starboard at an angle of forty-five; pitched by the head at an angle of thirty to thirty-two, she lay about one-third or a little more outside the extreme end of Rincon Point dock, or Hathaway's wharf, her bow in about forty-eight to fifty feet of water; the stern in about nineteen feet; three quarters of the length of the ship (from the mizen mast forward) lay on a bed rock. The ship was stripped of all her running gear and movable spars, except, perhaps, her main yard. I don't remember about that; there was about one-sixteenth of the ship above water, consisting of the port quarter.

Ques. Describe the water line across the ship as she lay.

(Josiah Porter, com'r for Cal.)

149 Ans. From the lower dead-eye in the port main rigging to the starboard bumpkin was the water-line, leaving the port quarter above water. The ship laid about ten feet from the dock.

Ques. Was the water line you have described, the line at low or high tide.

Ans. Low tide.

Ques. About what was the depth of water above the deck of the ship, at the stern, on the starboard side?

Ans. At high water it was covered; at low water it was bare; this was at the extreme point aft.

Ques. How did you then find the hatches of the ship?

Ans. Found the afterpart of the cabin house cut away on the (Josiah Porter, com'r for Cal.) port side, about twelve feet square, a hole cut in the main deck right under it, six by eight, about; the other hatches were all under water; as we worked to them we found them all open.

150 Ques. Did the water reach this hole through the cabin house?

Ans. About eighteen inches deep on the starboard side, on the main deck, it did; the tides washed in and out of this hole.

Ques. What injuries did you then find to the bottom of the ship?

Ans. At that time I did not search it. A short time afterwards, within a few days, we searched the bottom and found about twenty-five to thirty feet of her keel gone; that was all the damage we found to her bottom.

(Josiah Porter, com'r for Cal.)

Ques. Did you at that time discover other injuries to the ship?

Ans. I did.

Ques. State them.

Ans. From the main chains to the forward chains on the port side we found the rail gone and some ends of the stanchions; and I think one or two broke off entirely.

Ques. When did you begin work at the cargo?

151 Ans. I think it was on the eighth or ninth day after my arrival; am quite positive it was the eighth.

Ques. Was there any cargo there which had already been taken out?

Ans. There was.

(Josiah Porter, com'r for Cal.)

Ques. Where was it, and how much?

Ans. It lay under a shed on the dock, right opposite the ship; less than twenty-five tons.

Ques. Did you proceed immediately with the taking out of the cargo after this eighth or ninth day?

Ans. I did.

Ques. How did you take it out?

Ans. With submarine divers, and the aid of steam hoisters, and men.

Ques. What was the process?

Ans. The divers went down in submarine armor, and hooked our purchase on to pieces of the cargo; gave a signal to us above water, and then we would start the hoister and bring it to the surface; then

(Josiah Porter, com'r for Cal.) we would put it on board

152 of a lighter and ship it to Third street.

Ques. Where did you begin to take out the cargo?

Ans. In the after part of the ship, between decks.

Ques. Why did you begin there?

Ans. Because that was the highest part, and from there we worked downwards.

Ques. After removing the cargo from between decks, where did you commence?

Ans. In the after part of the ship, in two places, from the lower hold.

Ques. Did you then proceed in the same way down to the bow, taking out the cargo from the hold?

Ans. I did, with the exception of two guns, pilot house and smoke

(Josiah Porter, com'r for Cal.) stack, which I raised with hydraulic jacks.

Ques. What was the difference between the process of raising these, and that of raising the rest of the cargo?

Ans. We used pontoons and hydraulic jacks in the place of the steam hoister and derrick.

153 Ques. On what account did you have to make this change?

Ans. Because they were too heavy.

Ques. When did you finish taking out the cargo in this way?

Ans. I think it was about the 20th of April, or some time in that vicinity; a few days more or less.

Ques. During the time you were thus taking out cargo, how steady were your party at work?

(Josiah Porter, com'r for Cal.)

Ans. From early in the morning until late at night; all the time, with the exception of two days and a half, and Sundays; the two days and a half were stormy weather.

Ques. Describe the different pieces of, and pertaining to, the Camanche, which were thus taken out.

Ans. Her keel was in iron pieces from four to six feet long, and about twelve inches wide, oval in shape; her stern was in one piece, all iron; her stern post the same; the frame was made of
154 angle iron, about four inches wide, about fifteen to twenty-five feet long, each piece crooked to the shape of the vessel; the floor timbers about two feet deep, tapering to a point, and from twenty-five to thirty-five feet long. The planking of the hull was iron, in plates; they were from four to ten feet long, and about two feet wide, and from five-eighths to three quarters of an inch thick; (Josiah Porter, com'r for Cal.) the side armor and deck armor was of iron, in plates; the plates of the side armor were about five feet square, and one inch thick, and the plates of the deck armor were about three feet wide, and from four to eight feet long, and about one and five eighths of an inch thick. There were several steam engines in her belonging to the Camanche—all that were required for the Camanche—I don't remember the number. The turret plates were curved. There were also tools to put up the
155 Camanche with, bolts and other things for the same purpose.

Ques. How did these several things range in weight?

Ans. From five hundred pounds to twenty-six tons; that is, the pieces, independent of the small stuff.

Ques. State from your recollection what was the number of pieces (Josiah Porter, com'r for Cal.) independent of the bolts and small matters.

Ans. I cannot tell without reference to my books.

Ques. During the time you were thus taking out the cargo, was any, and if so what, injury done to the rigging of the Aquila?

Ans. I cut away the forward shrouds and main stay, I think.

Ques. What was the occasion of your doing this?

Ans. A schooner dragged into us in a southeast gale over the deck; I cut the rigging to clear her, so as to prevent her from sinking on the ship's deck.

Ques. Why was she in danger of sinking there? and why
156 was it necessary to cut away the rigging?

(Josiah Porter, com'r for Cal.)

Ans. She was tearing the ship's mast and rigging and herself all to pieces; she was foul of the rigging, and between the ship's masts. We jumped on board the schooner at the peril of our lives and cut her free.

Ques. What was the extent of danger in performing this service?

Ans. There was great risk of life.

Ques. After having thus taken out cargo, what next did you do with the wreck?

Ans. I fastened chains to the top of the ship, and attached the chains to the pontoons, took a lift on the forward part of the ship, about two feet clear of the bottom; then placed large chains under the bottom of the ship; then settled the ship down again to her original place, took a light lift on her stern and placed chains there,
(Josiah Porter, com'r for Cal.) and slacked her down again to her original place; then we attached the chains that were under
157 her bottom to the pontoons all around the ship, and moved her from the dock.

Ques. Before commencing thus to raise her did you endeavor to get chains under her bow?

Ans. Yes.

Ques. How?

Ans. We sent down divers, crow-bars, picks, and other tools, and found the rock too hard to get the chain under.

Ques. How many pontoons did you use.

Ans. Eight.

Ques. Were they constructed by you? and, if so, for what purpose?

(Josiah Porter, com'r for Cal.)

Ans. Yes; and to raise the ship "Aquila," with the cargo that was left in her.

Ques. Were they especially constructed for this service?

Ans. They were.

Ques. State the process of raising the ship, getting chains under her, and removing her with these pontoons.

Ans. I fastened chains to the ends of the deck beams,
158 bosom knees, and hanging knees, and several other places around the ship.

Ques. Why did you fasten the chains at these places?

Ans. These were the strongest points accessable to us for the purpose.

Ques. How many chains did you thus fasten?

(Josiah Porter, com'r for Cal.)

Ans. Eight or ten; four or five on each side, on the forward part of the ship; that is, forward of the main mast; they were two-inch chains; from those fastenings the chains were carried to the pontoons.

Ques. State how the chains were carried into the pontoons.

Ans. They came up through the bottom of the pontoons, through a well to the top of the deck of the pontoons, and were there attached to a lever; that lever was worked by hydraulic jacks, and in that way we have taut the chains and lifted on the ship. We lifted the forward part of the ship about two feet clear of the bot-
159 tom, and then we placed chains under her bottom.

Ques. Where did you put the chains under the ship?

Ans. About eighteen feet apart (Josiah Porter com'r for Cal.) under the whole length of her, and we let the ship drop on to the chains. We then fastened these chains in the same way to the pontoons, and by submerging and then exhausting the pontoons, gradually lifting the whole ship, and we then moved her upon the flats to the south of the dock.

Ques. When did you finish this?

Ans. It was about the twentieth of May when we got her on the flats.

Ques. How steadily did you work at this during this time?

Ans. Every day, and nights whenever necessary, Sundays included.

Ques. What injury occurred to the ship during the process of raising her?

Ans. There were from four to six deck beams broken.

(Josiah Porter, com'r for Cal.)

Ques. State how was this occasioned?

160 Ans. A steamer brought in a barque on the first of the ebb-tide, or otherwise high-water slack; the barque run into the mud, and her stern slewed down into us with the ebb tide and hit the Aquila on the starboard quarter. Her weight coming thus suddenly against us broke the upper deck beams to which our chains were fastened.

Ques. At what part of the process of raising the ship did this occur?

Ans. At the time we had four large chains placed under her bottom and before we got the other chains under. This put us back about six days.

Ques. After getting her on to the flats what next did you do?

(Josiah Porter, com'r for Cal.)

Ans. I dug a channel about thirty feet long, about fourteen feet wide, and seven feet deep, so as to enable my divers to go under her bottom and stop up the leaks; this hole in the mud was dug by a sand pump, and with the aid of divers. We then pumped the ship

161 out with steam pumps, having first stopped up the leaks. I then made a contract with a man to clean the mud out of the ship, and take out the balance of the cargo left in her.

Ques. In what condition did you find the bottom of the ship after you thus got her out?

Ans. We found several holes where the keel out, twelve inches across the ship by three in length, about. It was the whole keel from (Josiah Porter, com'r for Cal.) the stern, about twenty-five to thirty feet forward.

Ques Did you take out any cargo after you had thus raised the ship?

Ans. The man I employed took out all their was left, and cleaned all the mud out.

Ques. When did you leave San Francisco on your return to New York?

Ans. On the second sailing day in June of the Pacific Steamship Line.

Ques. At that time what was the condition of the cargo as to the extent to which it has been taken out of the ship?

162 Ans. It had all been taken out but two boilers, some water

tanks, some oak timber, a few shot and shell, and several pieces (Josiah Porter, com'r for Cal.) of the side armor, deck armor, and hull plates and some stray bolts and nuts.

Ques. What besides the cargo had been taken out of the ship?

Ans. Mud and water.

Ques. How much mud did you estimate their was in the ship when you raised her?

Ans. Six hundred tons.

Ques. State the weights of the ship materials of Camanche other cargo and mud, as estimated by you at the time you commenced to work on the wreck.

Ans. The wood and iron of the Camanche weighed about seventeen hundred tons above water. The ship thirteen hundred tons above (Josiah Potter, com'r for Cal.) water, and the mud about eighteen hundred tons above water. You can deduct twelve hundred tons off the ship, twelve hundred tons off the mud and about
163 five hundred tons off the cargo for the weight under water.

Ques. What in your estimation was the degree of skill and care with which this service was performed?

Ans. It was performed to the best of my ability and with all possible care.

Ques. Was it a dangerous service, in your opinion?

(Objected to as leading on the part of the claimant.)

Ques. What was the character of the service with respect to personal danger?

Ans. It was attended with (Josiah Porter, com'r for Cal.) great risk of life, for our divers particularly; they were in danger of having their legs and arms cut off, and also of having the air pipe of the armor severed by the long crooked pieces of iron. One accident did occur; a large piece of iron cut off the fore-finger of the left hand of one of the divers; that is about all the danger I know. Their leading lines and life lines would get foul, and this was dangerous
164 to some extent, but not very serious, as we could send another diver down to clear them.

Ques. What degree of care, attention, and skill was used on the part of the whole party in removing the cargo?

Ans. All that could be, so far as our abilities would allow us.

Ques. What precautions were (Josiah Porter, com'r for Cal.) exercised against injury to the cargo in removing it?

Ans. The divers carefully hooked on to the top pieces which were supposed to be clear; the engineer would carefully start his engine, and finding it clear, would run the piece up with ordinary speed, and if not clear he would slack away and the tender or the diver would signal to the diver that it was foul; then the diver would clear it and signal back, and so it went on in routine. As the pieces were raised they were lowered on the deck of a lighter which took them to the foot of Third Street.

Ques. What was the degree of difficulty in removing the cargo?

165 Ans. It was very difficult in one sense; I consider it very much more difficult than any other cargo that was ever (Josiah

Porter, com'r for Cal.) taken out of a ship by reason of the shape and weight of the pieces, and the way it was stowed and the position the ship was in. The stanchions were so secured in the lower hold, and cargo stowed down so solid that it made it more difficult than other cargoes to be removed.

Ques. In your opinion was it practicable to have raised the ship and cargo all together?

Ans. It was not; if I had thought so I would have done it.

Ques. Why could you not have raised the ship and cargo altogether in the mode in which you finally raised the ship?

A. I did not dare to take the risk in the time I was limited to, if it could be done. I don't mean to say (Josioh Porter, com'r for Cal.) it could not have been done; the risk was too great for the
166 position the vessel was in without reference to time.

Ques. State the difficulties or objections which in your opinion rendered that mode unadvisable.

Ans. There were about nineteen hundred tons of dead weight in the ship to lift; the upper deck beams were not strong enough to hold that weight. The ship, laying on a solid rock two-thirds of her length, prevented me from hauling chains under her bottom, and I therefore had to lighten the cargo so that the main deck would lift the balance. If I had attempted to do it in this way, that is lifting it all together at that season of the year, any failure or delay would have resulted in the destruction (Josiah Porter, com'r for Cal.) of the cargo.

Ques. What, in your opinion, would have been the result to the "Aquila" of such an attempt?

Ans. I don't know whether she could have stood it or not, I can't say. I did not dare to undertake it.

167 Ques. Would it not have been a better mode to have used India rubber bags?

Ans. In my opinion it would not; the ship lay open to a bay of from thirty to forty miles in length and from three to five miles wide, subject to southeast gales of wind which had a clear rake down this bay, and nine times out of ten the India rubber bags would have chafed to pieces.

Ques. Have such bags been used in the wrecking service? and if (Josiah Porter. com'r for Cal.) so, with what result?

Ans. They were used in the wrecking service for about two years and then abandoned; they were tried twice or three times during that period, I suppose, and have not been used since.

Adjourned to Friday July 21st at 2 o'clock in the afternoon.

Isaac T. Merritt, being further examined on this 21st day of July, 1865, on the part of the libellants, doth depose and say, as
168 follows:

Ques. In what mode is hydraulic power applied to the raising of shipwrecked property?

Ans. In the form of hydraulic jacks; they give hydraulic jacks the motive power, which is applied to raising the ship.

(Josiah Porter, com'r for Cal)

Ques. Did Mr. Ryan suggest to you a mode of raising the property by means of two iron cylinders? and if so, what was the suggestion made by him?

Ans. I recollect Mr. Ryan suggesting to me a mode of sinking iron cylinders, and boring in the rock under the ship on each side, making the hole meet, and in that way drawing chains under them. Mr. Ryan suggested that this might be done.

Ques. Was that mode practicable, in your opinion?

Ans. It was not my style of working; it was not with my
169 practice. I never saw or heard of it being done.

Ques. I ask whether you think it was practicable.

Ans. I do not in that case.

(Josiah Porter, com. for Cal.)

Ques. Why not?

Ans. The delay of time in boring so many holes to get under the necessary number of chains to lift the weight that was in that ship, you would have to bore through the rock in some half dozen places. You would have to bore down and then under, and then you would have to break away the rock between the chains and the ship, so that the chains would come up to the bottom of the ship. If you did not break away the rock the chains would be fast.

Ques. Did Mr. Ryan offer you to sink these cylinders for ten thousant dollars?

Ans. Mr. Ryan either offered to put down the cylinders and put
chains under the ship in that way for that sum, or suggested
170 that it could be done, providing I would (Josiah Porter, com'r for Cal.) furnish the money; he said he did not have the means at that time.

Ques. After the Aquila was raised, what was found to be her condition?

Ans. A bad looking hulk. Her decks were broken up in places, some several deck beams; the rail on the port side, and the stanchions carried away; badly worm eaten outside and in as far as I could see, and she had a coat of several tons of mussels on her.

Ques. What part of the injuries to her occurred in the course of your work upon the wreck?

Ans. A portion of the wreck and wreck beams occurred in my time of working, and the cutting of the rigging I have referred to.

Ques. What injury to the materials of the Camanche occurred during (Josiah Porter, com'r for Cal.) your salvage service?

Ans. Several pieces of the frame were sprung, and several
171 broken in two; by sprung I mean bent. I think the bearing for one of the blowers was broken, and there may have been the ends of some of the plates where they came to a very sharp point bent over; several kegs of rivets were bursted. I don't recollect anything else.

Ques. Were these kegs of rivets lost?

Ans. The kegs might have been, but the rivets were saved.

Ques. Can you give any estimate of the cost of replacing and restoring the pieces broken and bent?

Ans. I had an estimate made, but I have not got it here. The estimates were made by Mr. Patterson and Phelps & Bro. Patterson is now here. Phelps & Bro. are of San Francisco.

(Josiah Porter, com'r for Cal.)

Ques. Why did you take the property to the foot of Third street, instead of landing it at Hathaway's wharf?

Ans. Because I made a contract to do it.

Question. With whom did you make the contract?

172 Ans. Captain Fletcher, the underwriter's agent, in presence of Mr. Ryan. This was a verbal contract.

Ques. What was the increase of expense of taking it there, over and above what would have been the expense of landing it at Hathaway's wharf?

(Form of question objected to by counsel for claimants, on the ground that the cost of either plan only can properly be shown.)

Ans. Three thousand dollars in gold.

(Josiah Porter, com'r for Cal.)

Ques. Did you yourself take the property to the foot of Third street after getting it out of the Aquila, or contract to have it done?

Ans. By contract.

Ques. What was the contract price to be paid, and was it paid by you?

Ans. Five thousand dollars in gold; and it was paid by me.

Ques. Did you ever represent yourself to Mr. Ryan as the agent of the underwriters?

Ans. I did not.

Ques. Whose agent were you?

173 Ans. Agent for the Coast Wrecking Company, of New York.

Ques. Did you represent yourself as the agent of any one (Josiah Porter, com'r for Cal.) else than the Coast Wrecking Company?

Ans. I did not.

Ques. Did Mr. Ryan speak to you of a proposition as having been made by Fell, Eaton and himself, for the raising of the property?

Ans. I don't recollect; he might, and he might not.

Ques. Before you commenced work, did Mr. Ryan express to you his opinion as to whether it was practicable to remove the cargo from the ship before raising her.

Ans. He did.

Ques. What was the opinion expressed?

Ans. He said it was impossible to remove the cargo with divers, for he had stowed it himself, and had it well stowed down.

(Josiah Porter, com'r for Cal.)

Ques. Did you employ men, and obtain and prepare apparatus at San Francisco, in addition to what you took with you?

174 Ans. I did.

Ques. Did you pay all the men and other expenses at San Francisco?

Ans. It was paid by me.

Ques. For whose account, and under whose employment, and at

whose expense, did you and your party proceed to San Francisco and perform these services, and incur and pay these expenses?

Ans. The Coast Wrecking Company, of New York.

Ques. Were you and your party employed by this company and paid by them to perform the service?

(Josiah Porter, com'r for Cal.)

Ans. We were. Some were employed especially for this purpose, and some were employed annually by the company.

Ques. What is the business of the Coast Wrecking Company?

Ans. To assist all vessels and cargoes in distress, and raise sunken vessels and cargoes, and heave vessels off the beach, and other services of this kind.

Ques. Does the company keep constantly on hand, for the
175 emergencies of this service, vessels, men, and apparatus, especially adapted to the service?

Ans. They do; also storehouse and office.

Ques. What is your position in the company's service?

Ans. General agent.

(Josiah Porter, com'r for Cal.)

The said Israel J. Merritt, being cross-examined on the part of the claimants, doth depose and say, as follows:

Question. With the exception of the case of the Aquila, have you ever performed any wrecking service in California?

Ans. No.

Ques. Which of the party taken out by you were in the regular employ of the libellants.

Ans. Myself and Captain Poole, the engineers, one of the divers, one of the men, and the clerk. The rest of the men were off and on in the employ of the company.

Ques. How did the company pay those composing the party,
176 by the month or year?

Ans. Some by the year, some by the month, and some got primage in addition. The (Josiah Porter, com'r for Cal.) divers got primage.

Ques. State the pay of the members of the party.

(Objected to by the counsel for the libellants, as having no proper bearing on the salvage compensation.)

Ans. The divers averaged about thirteen dollars a day from the time they left New York until they got back, including the primage I allowed them; the pay of one diver was one hundred and twenty-five dollars in currency, twenty-five in gold, and five hundred dollars primage for the job. This was the pay of each of three of the divers; the other diver belonged to the Coast Wrecking Company, and received seventy-five dollars in currency per month annually, and five hundred dollars primage for the job. The pay of the engineer
177 was one thousand dollars per year in currency, and two hundred and fifty dollars primage (Josiah Porter, com'r for Cal.) for the job. I paid each of the men thirty dollars a month in currency, and six dollars a month for the time, in California gold, and fifty dollars each primage for four of them, and the other man a hun-

dred primage. The clerk was paid thirty dollars a month in currency, and six dollars in gold, per month, and one hundred dollars primage for the job. Captain Poole received twelve hundred dollars per year, and on that job he got five hundred dollars primage. I receive forty-five hundred dollars per year, and expect to get primage from somebody in addition to this. I paid all their expenses from the time they left New York until they returned, including doctor bills.

Ques. Did you take out with you any apparatus other than such as was used by the company?

Ans. No. (Josiah Porter Com'r for Cal.)

178 Ques. Did the pay stated by you pay for all the liability to hazard and peril of life and limb testified to on your direct examination by you?

(Objected to by the counsel for the libellant on the ground of indefiniteness, in that it might be supposed to call for an estimate of the whole hazard of the undertaking.)

Ans. No; it is our practice in case of accident to any of the men hurt in our employ, to raise money for them, and in case of death for their families, and to try and put them in some position where they can earn a livelihood without being thrown upon the world. In such a case I go to the company, and it provides the funds for the purpose. The company generally does what I say and acts on my suggestions. The company also pays medical bills of men hurt in their employ.

The pay was all the men had (Josiah Porter, com'r for Cal.)

179 a right to claim against the company.

Ques. What was the value of the apparatus you took with you?

Ans. The value here was about twelve thousand dollars.

Ques. How much of that, if any, was left in California when you returned?

Ans. We left out there all but about the value of three thousand dollars which we brought back; the rest of it was worn out and sold, realizing fifteen hundred or fifteen hundred and fifty dollars in gold.

Ques. Have you ever made an estimate in currency of the entire cost of the expedition?

Ans. I have not. I have run the thing over in my head and made up my mind about what would cover the cost of the company. (Josiah Porter, com'r for Cal.)

Ques. State as nearly as you can what the cost was in currency and what in gold?

Ans. I cannot tell exactly. I think it was somewhere around

180 twenty-nine thousand dollars in gold, and I think nearly twenty thousand dollars in currency; in addition to which my primage is unpaid.

Ques. Which of the Aquila's hatches can you say was open when you began work on the ship?

Ans. Every one was open when I got there except the main hatch and a small hatch forward of the foremast. There was a sort of a

box partly over the main hatch, it was movable and partly covered the main hatch; except as partly covered by this box, the main hatch was open; the small hatch forward of the foremast was supposed to be covered; I don't know if it (Josiah Porter, Com'r for Cal.) was or not.

Ques. Did not the water at all times, until you raised the Aquila, flow through the hole in her bottom?

Ans. If there was a succulation or current there to force it through it would, commonly speaking.

Adjourned to Monday, July 24th, 1865, at 11 o'clock in the forenoon.

181 The said Israel J. Merritt, being further examined on the part of the claimants, on this 24th day of July, 1865, doth depose and say, as follows:

Question. Would keeping the Aquila's hatches covered, when you reached San Francisco, or at any time subsequent, till the vessel was raised keep the water out of her?

(Objected to by the counsel for the libellants on the ground that it might (Josiah Porter, com'r for Cal.) imply that the hatches were already covered when he began work, which was not the case.)

Ans. No.

Ques. What was the extent in cost of repair of the injury to the Aquila, rail and stanchions?

Ans. I could not answer; it was not a trifling matter; it was a trifling matter as compared with the value of the ship.

Ques. How was your purchase hooked on to the pieces of the Camanche by the divers?

182 Ans. Iron shackles shaped like the letter W, with a screw bolt across the end through the eyes. We bolted the screw through the bolt holes left in (Josiah Porter, com'r for Cal.) the iron pieces of the Camanche; then we had iron hooks, steel pointed, which we hooked into the bolt holes of the lighter pieces; the heavier pieces, and the pieces which had no bolt holes, we slung with chain slings; the "purchase" was blocks and falls, and steam hoister and derricks, except that in the case of six of the large pieces we used hydraulic jacks and pontoons.

Bues. What was it that bent or otherwise injured the pieces which you testified were injured?

Ans. I suppose it was done in taking them out; the pieces might be foul, and then the pull would strain them.

Ques. Can you state anything else that could have produced such injury?

Ans. I can on a portion,

Ques. State it. (Josiah Porter, com'r for Cal.)

183 Ans. There was a twenty-one ton gun fetched away from amidships, which went to leeward, where a portion of this cargo was stored; that is the only other thing of which I know.

Ques. What caused the gun to fetch away?

Ans. I can't say, unless it was moving the weather one alongside

of it, and after that one was raised a foot or two the other one fetched away.

Ques. Did you ever part your tackle in pulling?

Ans. We cut our pennet occasionally under the coamings of the hatch, and I am not certain but we burst some blocks in attempting to lift the bed plate and before we got started, and, perhaps, on other occasions.

Ques. Was not the power used in pulling out frequently much more than necessary (Josiah Porter, com'r for Cal.) to be used in merely lifting the piece?

Ans. In some csses it was.

184 Ques. Did you not frequently start pieces, and then have them fetch up so as to require a stronger pull or a change in the direction of the pull?

Ans. About half a dozen times, more or less, we needed to change the direction of the pull, but we did not increase the power.

Ques. By increase of power I mean putting more strain on the tackle; did you not at times need to increase the strain, and after a piece had started?

Ans. It might have been done occasionally, but not generally, we did not do it when the pieces got fast, and if ever it was done it was done without my knowledge or orders.

Ques. Do you mean to say that when you started a piece you started with a full power before trying to see whether [whether] it would give (Josiah Porter, com'r for Cal.) or not?

Ans. It depended upon what portion of the cargo we were at work on; that is where we knew it was clear and the plates were

185 heavy pieces, we did; where we knew it was tangled up and the pieces were lighter, we did not.

Ques. Did not the engine, at times when you were pulling, stop from exhaustion of power?

Ans. On the bed plate it did, and I think on a water tank or coal bunker; perhaps it did on something else, I don't recollect.

Ques. State a number which you will say will cover the times that this took place?

Ans. In the case of leas than one-sixteenth of the number of pieces in the ship.

Ques. Were you not mistaken frequently when you were signalled (Josiah Porter, com'r for Cal.) that everything was clear, in the fact of its being all clear?

Ans. Several times we were.

Ques. Did you not cut away hatch combings?

Ans. I did.

Ques. Did you not cut away beams also?

186 Ans. I did.

Ques. When did you cut away the combings, and the beams?

Ans. From time to time.

Ques. How many beams did you cut away?

Ans. I cut away five beams, including one on the upper deck at the main hatch.

Ques. Can you state any number of pieces bent, strained, twisted or some way (Josiah Porter, com'r for Cal.) injured in h u'ing out?

Ans. I have a memorandum of the bent, twisted, and broken; the strained no man could tell.

Ques. What weight of cargo did you remove from the Aquila before you lifted her?

Ans. All, with the exception of about one hundred tons of iron and three hundred tons of oak timber; my estimate is based on what Mr. Ryan told me, as the weight of the whole, would make the
187 amount removed thirteen hundred tons of iron; these are weights out of water.

Ques. Was raising the vessel necessary to a complete job?

Ans. It was.

Ques. Was the reason of your removing the cargo that you might lighten the weight so (Josiah Porter, com'r for Cal.) as to enable you to lift the Aquila?

Ans. It was partly the reason; another reason was to save the cargo from being destroyed; a third reason was to be more sure of success.

Ques. Did not the divers encounter unusual difficulty in the obscurity from the muddiness of the water. with reference to clearing the pieces, and seeing when they were clear?

Ans. No more than there would be in any other ship's hole sunk under the water; there was no more difficulty than there would have been in any other ship's hole with the same kind of cargo.

Ques. (Question repeated.)

Ans. I cannot say that they did.

188 Ques. How much of the ship's (Josiah Porter, com'r for Cal.) bottom at the stern was clear of the bottom?

Ans. If there was thirty feet of keel out of her, it was clear about twenty-two feet.

Ques. Did you yourself examine the character of the rock under the ship?

Ans. I examined the piece that was dug out from under her fore-foot.

Ques. How was it dug out?

Ans. It was picked off with a crow-bar.

Ques. When first did you send down divers, &c., to see if you could put chains under the bow of the vessel?

Ans. When I got ready to go to work to raise the ship.

Ques. Was that after taking out what cargo you did?

(Josiah Porter, com'r for Cal.)

It was before I completed it, along on the winding up.

189 Ques. What caused the mud in the Aquila when you raised her?

Ans. It was the settlings from the water.

Ques. Can you tell me how much mud, if any, there was in the Aquila until, as you saw it, when she was raised?

Ans. By calculation I can come near it; the ship was sunk six months, and I had her four; that would make two-thirds of the mud come in her while I had her.

Ques. Were not the openings through which mud could enter the Aquila larger after you commenced work than before?

Ans. As I increased the work they were.

(Josiah Porter, com'r for Cal.)

Ques. Could not the cargo have been more safely, unexpensively, quickly, and with less damage to it, have been removed if the Aquila had been first raised, supposing that practicable?

190 Ans. Some pieces we could, and some we could not.

Ques. For raising which pieces did the Aquila, being under water, furnish an advantage?

Ans. The guns, pilot-house, and two hundred tons of shot and shell. I don't know of anything else.

Ques. If you had considered it practicable to raise the ship and cargo together, was not that the better plan than that which now adopted?

Ans. No.

Ques. If you had thought it practicable, would you not (Josiah Porter, com'r for Cal.) have done it?

Ans. I should not; I have my reasons for it.

Ques. What do you mean by the expression, on your direct examination, "the time I was limited to"?

Ans. I was limited to a certain time by the contract under which the company was working on this job.

191 Ques. You mean then to say, do you, that you were influenced to adopt the plan you did by the limited time allowed by your contract?

Ans. No. I adopted the plan I did because I thought it was the best one.

(All subsequent to the word "no" objected to by the counsel for the claimants as irresponsive.)

Ques. Did you mean to state that (Josiah Porter, com'r for Cal.) when kegs of rivets were bursted all the rivets were saved?

Ans. I took every precaution to do so, and believe it was done. I was there only two days when they were taking out the mud after the ship was on the flats.

Ques. Did not the underwriter's agent land from the lighters, and in some cases from the pontoons, the cargo taken to the foot of Third street?

Ans. In some cases where they preferred to do it; from my pontoons they took some which I paid my proportion for; my proportion which was for extra wages and labor, to get from under my
192 pontoons to high water-mark. I paid one hundred odd dollars for this.

Ques. How much was not landed by the underwriter's agent?

Ans. The first two lighter loads (Josiah Porter, com'r for Cal.) the contractor discharged at high water-mark or thereabouts. As we checked the cargo on the sand in heaps it did not suit Mr. Ryan, because the underwriter's agent told me so. They preferred building a platform and taking it off the lighters themselves as cheaper and easier for them.

Ques. How were these two lighter loads discharged.

Ans. I was not there in person; I had a stevedore attending to it.

Ques. Have you not at times acted for the underwriters?

Ans. Some fore or five years ago I was their agent, and acted for them in the wrecking business.

Ques. Have you not since acted for them with reference to wrecked property?

(Josiah Porter, com'r for Cal.)

Ans. I have not represented them at all for the past four
193 years. I have contracted with them and done work by day's work in an independent capacity.

Ques. Has the Coast Wrecking Company an agent at San Francisco, or has it had since this wreck?

Ans. I gave a power-of-attorney to Captain Fletcher to represent the company in this matter; they have, otherwise, no agent there.

Ques. When was the Coast Wrecking Company formed?

Ans. In 1860 or 1861.

Ques. Had the business, now conducted by them, been previously carried on by the board of underwriters?

(Objected to by the counsel for the libellants as irrelevant.)

(Josiah Porter, com'r for Cal.)

Ans. I had, on a small scale.

Ques. Did you manage that business for them?

Ans. I did for about a year before the Coast Wrecking Company was formed. I don't know as I had any regular appointment.

194 Ques. Was the Coast Wrecking Company formed by underwriters?

(Objected to by the counsel for the libellants, on the ground that that is a matter of written evidence.)

Ans. No.

Ques. By whom then?

(Objected to by the counsel for the libellants, on the ground that that is a matter of written evidence.)

Ans. As far as I can remember, (Josiah Porter, com'r for Cal.) it was by private individuals.

Ques. Were they not persons attached to various insurance companies?

Ans. Some may have owned stock; in no other way in which I recollect.

Ques. Who is the president of the company?

Ans. Charles Dennis; at that time a Mr. Smith—Daniel Drake Smith.

Ques. Is Mr. Dennis a vice president of the Atlantic Insurance Company?

Ans. He acts as such, and I believe he is.

195 Ques. Was Mr. Daniel Drake Smith president of the Commercial Insurance Company, or is he still?

Ans. I believe he is, and was.

(Josiah Porter, com'r for Cal.)

Ques. With whom did the Coast Wrecking Company make the contract under which they did their work?

Ans. With the committee of the parties interested in the Aquila and Camanche at hand.

Ques. You do not mean, do you, to include Messrs. Donahue, Ryan & Secor, or either of them?

Ans. I did not make this contract personally with Messrs. Ryan, Donahue & Secor, but explained to Mr. Ryan, on my arrival in San Francisco, and showed him the agreement of the other parties interested with ships "Aquila" and "Camanche," and he made no objection to the price.

(Answer objected to by counsel for claimants as irresponsive, and the question repeated.)

(Josiah Porter, com'r for Cal.)

196 (Counsel for libellants objects to the question, and moves to strike out all the testimony respecting the contract, on the ground that the contract is in writing and is the last evidence of who was the contracting parties, and what were their interests, and he offers that the contract itself may be added to and form part of the testimony.)

Ans. I don't know who the committee acted for; I cannot say.

Ques. Did you not, at San Francisco, request Mr. Ryan, and propose to him, to become a party to the contract?

Ans. I did not in any shape or form.

Ques. Was what you showed Mr. Ryan an executed contract, or a mere form without signatures?

Ans. A printed form without (Josiah Porter, com'r for Cal.) signatures; an exact copy of the contract, except the signatures.

Ques. How much have the libellants already received for the services about this wreck?

Ans. I don't know the amount.

197 The said Israel J. Merrett, being re-examined on the part of libellants, doth depose and say, as follows:

Ques. Who is Jacob A. Westervelt?

Ans. A ship-builder in New York.

Ques. Who is Charles A. Lamont?

Ans. I don't know.

Ques. What is the business of Isaac Bell, jr.?

Ans. I don't know.

Ques. What of Samuel F. Butterworth?

(Josiah Porter, com'r for Cal.)

Ans. I don't know.

Ques. What of Charles A. Marshall?

Ans. Merchant.

Ques. What of John D. Jones?

Ans. President of the Atlantic Insurance Company.

Ques. Charles H. Nelson?

Ans. An average adjuster.

Ques. Walter R. T. Jones?

Ans. Average adjuster.

Ques. Are either of these persons, so far as you know, officers of any insurance company, except John D. Jones?

Ans. No.

198 Ques. At the time you have spoken of in your cross-examination, (Josiah Porter. com. for Cal.) as having labored for the underwriters, was your arrangements with them anything more than that of performing salvage service for them, where they employed you so to do?

Ans. No.

Ques. Who contracted to take the cargo for you to the foot of Third street after you had removed it from the vessel?

Ans. A Mr. Friese, a stevedore, in San Francisco.

Ques. Who contracted to remove the mud after the vessel was raised?

Ans. The same man, Mr. Fries.

Ques. What kind of mud was it in the vessel?

Ans. It was light under water, so that, if touched, it would fly all over.

(Josiah Porter, com'r for Cal.)

Ques. When you began upon the wreck, to what extent did you find that the mud had settled down upon the cargo?

Ans. At the surface of the water we found the mud from
199 a quarter to half an inch deep, and increased as we got in deep water.

Ques. Did you make any examination of the bottom on which the ship rested prior to commencing work on her?

Ans. I saw it on a chart, got up expressly for that case by a revenue officer.

Ques. What was the next examination you made after this?

Ans. With divers, sounding-rod, lead and line.

Ques. When was this made?

(Josiah Porter, com'r for Cal.)

Ans. At sundry times through the work.

Ques. What kind of rock was it that was brought up, which you have spoken of in your cross-examination?

Ans. I don't know what kind of rock it was; it was softer than granite.

Ques. In what respect could any of the pieces be raised easier from under the water than from above the water, out of the ship?

Ans. They were heavy pieces, and were raised by hydraulic power and pontoons, and could be raised quicker with the materials we had there.

200 Ques. Upon what reasons do you base the opinion, stated in your cross-examination, that if you had considered it practicable to raise the (Josiah Porter, com'r for Cal.) ship and cargo together that would not have been the better plan?

Ans. With my experience, the time it would have taken to raise the ship and cargo together would have been so great that the main part of all the engines would have been so badly damaged that they could not have been used for the purpose they were made for.

Ques. What did you understand to be the reason why the persons receiving the cargo referred to take it out of your lighters instead of having it landed by your contractor?

Ans. Because it was handier for them to get at it and place it where they wanted it, for the purpose of constructing the ship.

(Josiah Porter, com'r for Cal.)

Ques. State what modification of the power used by you you caused to be made whenever there was any obstruction

201 preventing the pieces of cargo from moving out?

Ans. We signalled down to the diver that it was foul, having immediately stopped the engine. The engine stopped itself as soon as it got foul.

Ques. What safeguard was there against the piece getting foul and being injured by a continued pulling of the engine upon it?

Ans. By taking the cargo out clean as we went along. In case the piece got foul the engineer stopped the engine and signalled to the diver, who would go back to the piece and release it if he could, and free signal to those above. If the piece does not come (Josiah Porter, com'r for Cal.) it reduces the revolutions of the engine; and, if it will not come at all, stops it. The direction to the engineer always was to go slowly at the start until they were sure it was free, and then let her go at the usual speed.

Adjourned to Friday, July 28th, at 11 o'clock in the forenoon.

202 The said Israel J. Merritt, being further examined on the part of the libellants, on the 28th day of July, 1865, doth depose and say, as follows:

Ques. Describe the mode in which the power was increased when found to be necessary.

Ans. By applying extra sheves or blocks.

Ques. In what case was this (Josiah Porter, com'r for Cal.) done?

Ans. In cases where the pieces were too heavy to be raised with a single pennet.

Ques. When the piece did not come with a single pennet, what did you do before increasing the power?

Ans. Signalize to the diver that it did not come. He would go and ascertain whether it was stopped by its weight or was caught. If caught, he would clear it if he could; if not, he would hook on to another piece which was clear. If the weight stopped it, he would let me know, and we would apply more power.

Ques. Did the diver hook into pieces that were not entirely

203 clear, unless by mistake?

Ans. No.

Ques. Was the power at first (Josiah Porter, com'r for Cal.) applied so great as to endanger the safety of the pieces in case they happened not to be free?

(Objected to as to form by the counsel for claimants, on the ground that it was leading.)

Ans. In some cases, on pieces of the frame it might.

Ques. How did the divers ascertain whether or not the pieces were free?

Ans. By feeling out the whole piece with their bare hands.

Ques. For what purpose did you cut away hatch combings and beams?

Ans. To enlarge the hatches, so as to enable us to get ont the long pieces.

Ques. State which of the beams that were thus cut.

Ans. We cut the upper-deck beam (Josiah Porter, com'r for Cal.) upon which the combing of the after hatch rested; one beam in the lower between decks, under the cabin. We also cut some
204 beams in the main hatch on both decks. Some had been cut there already.

Ques. Did the divers depend upon feeling or seeing to do their work in the ship under water?

Ans. In feeling.

Ques. In what respect did that case differ from the ordinary case of a ship under water?

Objected to as to the form of the question by counsel for the claimants as leading.)

Ques. What do you intend by the expression, chucking the cargo on the sand in heaps, on your cross-examination?

(Objected to by counsel for the claimants as to the form of the question, as the language is clear.)

(Josiah Porter, com'r for Cal.)

Ans. It was discharged by a competent stevedore. I was not present, and I did not see it.

Ques Did Mr. Ryan, at or about the time of your com-
205 mencing work, state to you the position assumed by him, respecting the salvage.

Ans. I don't know that he said anything about his position or the contract. He said that he had abandoned the whole thing to the underwriters.

Ques. When you stated, in your cross-examination, that the contract shown Mr. Ryan by you was a printed form, without signatures, did you intend to say that it was an ordinary used by libellants in their business, or that it was a printed copy of the special contract made in this case, but without having the signatures appended to it?

(Josiah Porter, com'r for Cal.)

Ans. It was a copy of the special contract made in this case.

Ques. Are you the officer to whom payments due the libellants would be paid?

Ans. The treasurer is the officer. Sometimes I also receive them.

Ques. How was the water-way of the Aquila when you began work?

Ans. In the port side, betwixt the forward and main rigging,
206 it was split some twenty odd feet.

Ques. So far as you are aware, were any, and, if so, what kind of pieces strained?

Ans. Some of the pieces of the frame and, I think, two or three pieces of the floor timbers were slightly bent at the ends. There

were also (Josiah Porter, com'r for Cal.) several points of the plates of the planking bent slightly, but not broken, to my knowledge.

ISRAEL J. MERRITT.

Examination taken and reduced to writing on the 20, 21, 24, and 28 days of July, 1865, and by the witness subscribed and sworn to this 28th day of July, 1865, before me.

JOSIAH PORTER,
Commissioner for California.

Testimony taken by consent.—Judge's notes of testimony.

207 THE COAST WRECKING CO.
v.
THE MATERIALS, &c., of the "CAMANCHE."

F. W. Jenkins: I am a submarine diver and wrecker. Have worked from Massachusetts to Texas, W. India islands, and Cal'a. Came out here with Capt. Merritt to save the Camanche; arrived about the middle of January, 1864. We were sent out by the Coast Wrecking Co. of New York. Brought out diving apparatus, steam boilers, steam pumps, and hydraulic jacks. The apparatus consisted of helmet, hose, pump, weight, &c. I visited the vessel on our first arrival. I thought, with time and labor, we could succeed, provided we
208 had good weather. We commenced within a week of our arrival. The ship lay at Hathaway's wharf, listed to starboard about 45°, and she pitched by the head 38° to 40°. The flood swept over about ⅓d of her. The ebb-tide had a full rake of her, broadside on. All these circumstances were unfavorable to our enterprise. The incline of the deck prevented a man walking, and every piece had to be followed to the hatchway. We were obliged to crawl along by a line on the weather side. The angle at which the ship lay made the hatches seem much smaller. Many of the pieces were heavy and large; some were crooked. The bed-plate, pilot-house, smoke-stack, were in single pieces. The guns weighed about twenty-five tons; they were slung by the divers, and hoisted out by the hydraulic pressure. The process of raising these heavy pieces was very slow, and there was risk of them breaking away. The tide rendered it impossible for divers to be on
209 deck, except in slack water. There was about ten feet between the wharf and the ship; ⅓d of the ship projected beyond the end of the wharf. I superintended divers. Dove myself, until I got my finger cut off. Our mode of working was this: A diver would go down; the pennet would be hauled down to him; he would make it fast to a piece of cargo signal, and steam engine would hoist it out. We commenced working aft; we did not attempt to raise the ship as she lay. A diver went down forward and aft; Rogers was the diver—an experienced diver. We made no examination below water before commencing operations. Captain Merritt controlled; we consulted the divers, engineers, and assistant agent.

I don't remember any difference of opinion. We considered it impracticable to raise the vessel bodily. The time required for building requisite machinery would have been sufficient to allow
210 the vessel to fill with mud; also exposed us to bad weather. Have had experience in raising ships with cargo on board; had the Queen Mab with assorted cargo from Europe; we were obliged to discharge cargo; tried to raise her; she had too much water on her deck. I doubt whether we could have got chains enough under the Aquila to lift her with her heavy cargo; doubt whether the vessel would have stood. The apparatus would have to have been very powerful—large pontoons; not room enough to place pontoons between dock and ship, unless we removed a large portion of the deck. We commenced at afterpart of between decks on weather side and worked forward; we then went into lower hold.

The entire between decks was cleaned out, and the boilers and one or two small pieces and some timber were in her, when
211 we raised the ship. We left the boilers, being water-tight; we thought they would have a certain amount of buoyance. The between decks was cleaned out, and the small stuff in the lower hold to the after hatch, when I lost my finger. I made to one of the ribs, as it was dark; I could not see which way it would sag, and it caught my finger between it and amidships stancheon of the Aquila and cut it off; a piece was left in the lower hold. The list of the ship prevented our telling which way these crooked pieces would sag. There was a good deal of small lumber which floated up and interfered with us—fouled our lines. The cargo was stowed with a great deal of dunnage, and floored over with stanchions and cross-trees from the deck to the flooring. The cargo was stanchioned and dunnaged more than any cargo I have ever seen. When
212 a piece of cargo was broken out, the lumber and dunnage would float up overhead and catch the diver's lines so as sometimes to take him sometime to get it clear. I did not dive after I lost my finger. I superintended diving operations, and looked after machinery. I returned to New York either on the 3d or 13th June, 1864, on the Constitution. The Aquila had been raised and lay on the flat near Rincon Point wharf; we worked late and early; not on Sundays, except when we were raising the vessel; we missed not more than two or three days on account of the weather; we worked Sundays to get the benefit of high tides. In the afterpart of the between decks there was about an inch of mud; as we worked forward considerably more it made it very dangerous to travel round; slippery. The cargo was composed of a great many pieces;
213 most of them had sharp edges to them, that if they had struck a man, they would undoubtedly have killed him. We were obliged to saw some of the stanchions in two; some were pulled out by the steam hoister. The weather, when we first commenced, was very cold and muddy; the muddness continued during the whole operation. It was very dark; couldn't see anything under the deck. A submarine lantern was sent out to us; it was used once, and the divers broke the glass. We couldn't buy, or have made, another. I have

not experience enough with a lantern to say whether it could be of practical use or not. Have been a wrecker and diver since 1852; have been in employ of the Coast Wrecking Comp'y for two years; couldn't name the vessels I have wrecked; have been pretty
214 constantly employed. This operation was more difficult than any I have ever been engaged in; so much iron, dead weight, and the list of the ship, rendered it dangerous. You couldn't tell which way the pieces would sag, and it was difficult to keep the windward, so as to keep clear. We used steam as a hoisting power, and for very heavy pieces hydraulic power; only one man worked at each piece, or in each hatchway; they couldn't speak to each other, and therefore couldn't work together; couldn't see each other. In the lower hold we had two divers employed in different places for a short time. There was a gang for each engine; we had two engines for a small portion of the time. One of our divers got sick and went home. This broke up our two gangs; also my losing my fin-
215 gers had the same effect. We tried five or six men here; only got two divers; one was employed about the time I lost my finger, and the other shortly after. We did not expect to employ San Francisco divers, but one of ours got sick, and I lost a finger, so we employed two. It would be very difficult to find a good driver for such a job. The very large pieces were slung with chains attached to pontoons, and then raised by hydraulic power. It required a considerable time to sling the large pieces The chains were very large and very difficult for one man to handle. It would sometimes take three or four hours to sling one of the large pieces. We could stay down from 15 minutes to 3 hours; a day's work for a
216 diver is about 3 hours below water. I always staid about the wharf. I got surgical aid and treatment for my injury; it was paid for by the Coast Wrecking Company. The coast Wrecking Company provide for any man injured in their service; they make a collection, and get him employment outside, if there is no situation he can fill with them; if fatal accident, they bury the man, make collection, and take care of his family. The medical aid is assured you by contract; the other assistance, after recovery, is merely their practice. I have known them to do so in a good many cases. The service is dangerous; unexperienced persons are very liable to accidents. Have known Capt'n Merritt. I have always looked to him as at the head of the business; the smartest man engaged in it. I don't think this job could have been done in any other way.
217 It was a vey difficult and unusual job, out of the line of ordinary wrecking operatives; much more difficult. I think Captain Merritt's management was first-class. I am no longer in the employ of the company. I still am a wrecker; don't know whether I shall be employed by them when I go home. I am on my way home now from China. I have no interest whatever in this suit. The apparatus we brought out was of the first class.

Cross-examined.

When we arrived we had four divers, Y. B. Rogers, Bailey, G. F. Malcom, and myself. Rogers and Bailey wrecked during the whole time. Malcom got sick, and went home; he worked two days, and then worked around the wreck, left us, worked around town,
218 and came back; he was away about a month; done no more diving. I dived during more than half the job. We employ W. G. Dyer and Charles Lougee here; they joined about the time I lost my finger. Our party from New York consisted of 12 or 13 persons, including Capts. Merritt and Poole. There was one clerk, T. J. Welsh; two brothers of Capt. Merritt; they were general wreckers; they didn't dive; they turned the pump; one of them run the steam engine. We brought a steam engine with us, also hired one here. They staid during the whole time. Comesty was a general wrecker; he was posted on wrecking. David Trumbull was also a general wrecker. E. C. Perry was engineer, regularly certificated. Merritt and Poole, Rogers and myself, attended to hydraulic apparatus. I had worked before with Merritt, Poole, Malcom
219 Bailey, and Comesty. All remained but Bailey; Rogers got his leg bruised; laid him up for two or three days; can't say how it happened; he got to leeward of a box, and it struck him, in the lower hold; don't remember any other casualty; lost my finger down to the second joint; don't remember the amount of Dr. Toland's bill. This was the most difficult job I ever met with. Diving in a harbor, with a strong current and muddy water, was more difficult than diving on open coast. I have dived among breakers. I look upon this as the more difficult. In breakers you could see sometimes, but here you couldn't see. I never dived in breakers on a sandy beach; have dived in breakers among rocks. You lie down on the bottom where the breakers don't affect you. Crawling on hands and knees
220 is not usual in working on the cargo of a ship. It is always done in diving among breakers. I have dived at night; this was not more difficult than diving at night, so far as light was concerned; divers seldom work at night; never heard of diving at night for property; it is unsafe for divers to go down, because persons on top cannot see so well; they get sleepy. The most difficult diving I have done next to this was the ship "John Hughes." I assisted in taking out her cargo in ten fathoms of water. It was a much easier job than the Aquila. She had an assorted cargo, which was buoyant enough to enable you to work around it without danger. The greater depth of water increases pressure on lungs. I wrecked the Ella Walley 7 miles from Jersey shore on open ocean, ten or twelve fathoms. We went to look for specie; worked about a week.
221 Should think this more difficult than diving in heavy breakers on the coast; have no idea what the San Francisco divers were paid; they are paid by the day.

To the best of my recollection I was to receive $175 per month, $50 of it in gold. I got primage, but couldn't state how much. I think Capt Merritt's standing salary is $35 or 4500 per year, and he

gets a primage; all expenses, travelling and for board, were paid from time we left New York until we got back. We could see at all under water, not even on the deck. You could'nt see under the deck of any vessel; if the water is clear, you can see under the hatchways. I was not paid by Coast Wrecking Co'y for loss of my finger. The cost of a diving suit, with air pump, hose helmet, &c., is about $2,000 in gold in New York; 6 dresses cost $2,500 to 3,000; 6 dresses
222 are an outfit for a man for 6 months. We had two pumps, three helmets, 12 dresses, about 1,000 feet of hose, 7 ply rubber hose. I have bought diving apparatus, paid $2,100; gold was then $2 18. The dresses used on the Camanche were far superior to mine. The apparatus was first-class. We had three divers at work all the time on an average; sent down about three divers a day; the day's work was about three hours. There was about nine hours a day of diving done as near as I can remember. Dyer did as much as New York divers. I don't think Lougee did. If we had had more competent divers, there were occasions when we could have done more work, but they were rare. It was very seldom that we could have worked to more advantage than we did. Can't say which was the largest piece. The gun weighed 25 tons· the
223 plates varied from 50 to 1,000 lbs. The water came aft on her deck as far as a diagonal line from her starboard main-chains to the bumpkin on her larboard side. The ship lay in about fifty feet of water forward. The fore hatch on the lee-side was about thirty feet under water; the main hatch was ten or twelve feet under water; can't say exactly. We discharged through the after and main hatches and through a hole cut in the deck in the cabin. It was not out of water on the upper deck, and on the lower side it was awash at low tide. About one hundred tons of cargo were left in her when she was raised. She was finally raised by chains, fastened to her upper work. We then got chains under her; raised by pontoons, hydraulic pressure and levers. The Coast Wrecking Co'y started in 1861. The water felt very cold when we first com-
224 menced; not so much so afterwards. Previous to this I was paid $10 per day. I declined to come to San Francisco, unless on higher pay; when employed by company regularly I recived ½ pay when not at work. Divers cannot communicate with each other in muddy water. It is not a common thing to dive for cargo in breakers.

Direct.

Barnes: Aquila sailed from N. Y., May 29, 1863. Arrived in San Francisco Nov. 10, 1863; brought along side Hathaway's wharf Nov. 15, 1863. She foundered about 1 a. m. Nov. 1[illegible] her bow in 48 or 50 feet of water. Fletcher's first attempt to pump ship out made Dec. 3d, 1863. Attempt to raise her, by passing chains
225 under her, January 2d, 1864.

Act of incorporation of Coast Wrecking Company of New York offered in evidence. Admitted.

Wm. N. Yornbohm, acting 1st ass't engineer in U. S. service:

I am at present chief engineer of Camanche; have been in U. S. service since Dec., 1865. Since 1849, have been chief engineer of ocean steamers of the Pacific M. S. I was assigned to duty as inspector, to superintend completion of the Camanche; appointed by the secretary. I was at Hathaway's wharf the next morning after the Comanache was sunk. Saw the officers of the ship; saw Mr. Ryan there. I had no official connexion with the salvage, ex-
226 cept to receive cargo after it came out. I offered my services gratis to assist. I was frequently present at consultations as to best mode of raising the ship. Mr. Ryan was present. The first attempt was to pump the ship out; divers went down; covered bottom with canvas; covered hatches; got all the best wrecking pumps in town, 10 or 12 in number. Shoots were made to put suction-pipes in hold. Schooner was engaged; pumped steady for about twenty-four hours; lowered the water five feet; found we couldn't succeed; gave it up. Mr Ryan had general charge of the operation; next attempt was to get chains under her bottom. Steamer was employed to tow the chains under; five engines to blow a hole under; for about 2 months attempts were made.

227 Attempt was made with a needle to pull chains under; at work at this for a week; nothing was done after that until Capt. Merrick came out. The best mechanics in the city were contriving plans. Mr. North drafted some plans for a dry dock. I can't think of all their names; none of their plans were adopted. I was there while wreckers were at work; was present every day, advising the best method of preserving the articles as they came out of the water; to preserve them, so as to be able to build the ship. The mode adopted by the wreckers proved to be the best possible. I had at first serious doubts of their their success, owing to the great weight of [of] materials, and awkward position of ship made it dangerous to life and limb; as it was they succeeded very well, giving us ample time to clear the pieces and preserve. Looking back at it I think their mode was the best and only mode of saving the property.

228 If the ship had been raised, the pieces would have been ruined by rust; would have come out so fast, no time to clear them. The divers handled pieces with great care and skill; it took near five months. They worked very steadily from morning to night, except Sundays—except last part. They cut away part of the ship's deck; impossible to get out pieces without cutting away decks; some of the pieces were six feet deep, forty feet long. The inclined position of the Aquila rendered it impossible to get them through the hatches without cutting them. When the ship first went alongside wharf the hatches were open and deck taken up by captain's order for this very purpose; this was before ship was sunk. The cargo was delivered in as good a condition as circumstances would admit. The cargo was considerably damaged; the ribs were bent and broken in hoist-
229 ing out; this could not have avoided. No cutting was done not necessary to take cargo out. There was great danger connected with the operation; the signal lines were in danger of being

hampered up by floating timber; cargo might have got adrift. The divers remained four hours below water. I think six hours made a day's work. There were thousands of different pieces. The total weight I should take to be about 1,400 tons, the guns 22 tons each, pilot-house 26 tons, the hull plates averaged 12 to 1,500 lbs.; the lightest piece was perhaps a hundred pounds. There were two main engines and condensers separate, and eight auxiliary engines; a great deal of bright work; this was covered with white lead and tallow; the keel had been laid and hull filled before shipment; the machinery had been made by hand. All the Camanche was not on the Aquila; the fine backing was got out here; some iron hatches and
230 patent lights came out across the Isthmus; steering geer, steering wheels.

Cross-examined.

Martin was one of the divers employed in first attempt; two or three more acting under him; they hauled the canvass under the stern, about thirty or forty feet forward, where leak was supposed to be. This first attempt was made under supervision of Mr. Ryan and Capt. Allison, of Benecia works, engaged by Capt. Fletcher. Capt. Fletcher superintended the attempt. A large portion of the cargo was got out before the wreckers arrived by a stevedore's gang; it was minor articles—lamps, chains, furniture, crockery, outfit. It was aft. out of water; might have been 30 or 40 tons. I don't know the parties who made the second attempt. These attempts, the 2nd
231 and 3rd, were mere experiments, not to receive anything. I had never seen any diving before. There were but few days of bad weather when they didn't work. The ship's crew had taken off combings of main hatch and opened the deck before ship sunk. They had cut it so as to make about twenty feet square. The size of the hatch was about ten feet square. This had been done in New York upon loading the deck; had been prepared in New York for the purpose. Divers staid below 4 to 6 hours. The water was 8 or 10 feet above the opening of the hatch. The two guns and pilot-house were taken out by divers, but the boilers and some ammunition, amounting together to 600 tons, were raised with the ship. The guns weighed 42,000 lbs. each. They and the shot belonged to the ordnance department of government; various parts of the ma-
232 chinery were left in the ship. I should think about 800 tons were raised by the divers. The plates weighed, armor plates, 1 ton; turret plates, 1½ tons; smallest packages hoisted out weighed 100 lbs. Engines weighed from 1 to 5 tons. The cost of cleaning up all the materials was $20,000 in gold. It was done under my direction. The contractors built the ship, and it was accepted. The plates were bent: almost every plate and rib required more or less work to make them fit. A great many pieces were damaged so that they could not be used; the wood was damaged by worms. The plates were simply bent, not lost; they were re-shaped in the forge or heeled under the ship.

Cross-examined.

The plates had been fitted, but had not been bolted. Some of the damage might have been caused by the shifting of cargo. I
233 cannot tell how much was injured in taking it out. The cost of building here, &c., up to the time she was handed over to gov't, I understood to be $120,000 in gold. I got this from time-keeper, and reported to government.

R. H. Waterman:

Saw the Aquila; saw various unsuccessful attempts to raise her. I was there every day, was consulted by Capt. Fletcher, Mr. Ryan. I had an idea Capt. Fletcher would succeed. I proposed to take the cargo out first. I think now that the ship could not have been raised with the cargo in. Capt. Fletcher tried to pump her out; could not stop the holes in her bottom. I saw the wreckers at work. I thought they were working as well as men could. They adopted the
234 proper and only way. I proposed that plan to some gentlemen here some months before the wreckers came out; they didn't adopt it; some of them laughed at me. It was very dangerous for the divers, especially in muddy water, and the cargo was very bad to be amongst. It was far more dangerous than working outside of a ship in clear water; far worse than bales and boxes. I know of no way in which that cargo could have been more rapidly or more safely salved. It was necessary to get the cargo out to give the ship any value. Large holes were cut in the decks; the beams were in the way. My own estimate of what it would cost to hook on and hoist out the cargo was $20,000.

Amos Noyes, marine surveyor:

235 I think after the vessel was shipped; the hull had no value at all with the cargo in; after she was raised she sold for 4,000, ship and tackle.

A. C. Freese:

Am a stevedore 13 years; was employed about Camanche after she sunk by Captain Merick to light the cargo, piece by piece, to foot of 3rd street; received $5.000 in gold. I contracted with Capt. Fletcher to wash the iron with fresh water; I received for that $1,750. I did all the work, saw all the materials, handled nearly every piece. I think a cylinder I saw coming up was slung as carefully as if it had been on the wharf; the same with the small engines; did not see a piece broken from carelessness. The men stood in danger of their lives every time they went down. Captain Merrick felt the
236 greatest anxiety for his divers, as he was satisfied he could not obtain any one in California to do the work. The wreckers themselves regarded it very dangerous. They worked every day, except Sundays, and when there was a heavy southeaster. I discharged the balance of her cargo and mud after she was raised; delivered her at the foot of Third street; I was paid $1,300. There was

left in her two boilers two lighter loads of iron and the oak timber. The lighters carried about sixty tons each; the boilers were thirty tons each; two lighter loads of oak timber, perhaps, with boats, fifty tons each; perhaps 200 tons of solid mud.

Cross-ex'd.

My contract was in writing with Merrick; used two or three scows.
237 I took, I think, from 31 to 32 lighter loads, about sixty tons each; I got for this $5,000; my agreement was to receive one-half every week, the other was contingent upon the balance of the cargo being taken out. I took the risk of my lighters sinking. It took us a week to load the first lighter—generally two a week. I began the job on the 27th January, and landed the boilers July 3rd—busy every day—had sometimes 3 men, sometimes 15 men; 3 or 4 men receiving cargo. There were 5 or 7 shot and shell left; this is included in the weights I have given. The shrapnel were taken out by the divers. 200 tons of shot and shell were on board three loads. I took it to Mare island, got paid for 200 tons; got $2½ per ton.

Mr. Farnbohm recalled.

Since testifying yesterday I have found that I made a mistake
238 as to weight of materials on board when the Aquila was raised. I said there was 600 tons; on referring to my reports I find there was not more than 250 tons. My report states that there were between forty and fifty tons of machinery, besides the boilers and deck timbers, and armor block, amounting altogether to about 250 tons weight. I reported to government, (report produced;) it is a correct statement. The materials taken out by the wreckers could not have been made as there is no rolling mill here; it would have taken at least a year to have replaced these articles from the east.

Cross-ex'd.

When I went home I thought over this matter and took out my papers and found I was mistaken. I got at the weight mentioned in
239 my report by a rough calculation. The boilers weigh about 15 tons each. There was about 60 oak deck beams, 12 × 16, and from 40 to 45 feet; they would weigh about a ton and a half. The articles which could not be made were the turret plate and armor plates, any plates of extra size—requiring rolling mills to make them. The mechanics could make any portions of the machinery on plans sent from the east; nobody would think of hammering out the plates by hand.

Direct resumed.

It would have taken, to hammer out by hand these plates, about ten years.

Charles H. Lougee:

I am a submarine diver; have been engaged in it about seven years; mostly on the Atlantic coast, in Gloucester, Boston,
240 Newport; have been constantly engaged; came out with Captain Merritt's party, but not in his employ; was employed by him here as submarine diver. The ship lay underneath the water, her head down and careened over; you could not stand on her deck; she was nearly all under water past the main hatch. At high water, head lay in fifty-five feet water. The first thing done was to cut out a hatchway through both decks. This cutting was about three feet square, no larger than was absolutely necessary; we enlarged the main hatch about six feet. Both of these cuttings were made under water; we then commenced hoisting out the Camanche. The cargo was held in the place by planks running from one stanchion to another.

It was dark in the hold; had to feel all over every piece before
241 hitching on; we would then work our way back until we got beyond the main hatch as near as we could judge and signal to hoist; during the latter part of discharge mud very deep, up to my neck; once so thick that when I went down to get hold of pieces it stopped the valve of the helmet and lifted me up. We worked four hours a day—this is a day's work for a diver; we worked nearly two months, steadily every day, except Sundays. I have worked on a number of vessels and don't think I ever worked on a more dangerous. The water was very thick; took a submarine lantern down; turned on the flame until it broke; could not see a ray of light. We also cut away rail and bulwarks off to enable us to get the camel down to raise the ship. I think no other way of saving the
242 ship or cargo could have been adopted; I think they were only saved by very superior management. Some of the cargo was very heavy—two 15-inch guns, the pilot-house and smoke stack were very heavy; very little damage was done to the cargo in hoisting; have seen some bent, none broken. I suppose the main hatch had been enlarged to get the cargo in. The cargo, as taken out, was put on lighters and conveyed to 3rd street. An experienced diver came out here from Boston, made two dives, said it was too dangerous, and left. Mr. Malcom also made a dive, said we couldn't work there; he was afterwards employed by Capt. Merritt to attend the divers. One of the divers had his finger off; had his leg or arm been caught
243 in the same way he would have lost it. The cargo in lower hold was mostly discharged from main hatch. I think I never saw a vessel discharged with more science than this. Capt. Merritt managed as well as it could have been. I do not now see how the cargo could have been discharged differently or with less damage to ship. I don't see how it would have been possible to raise the ship with cargo in her. The expense would have been far greater, if it had been possible. Know Mr. Ryan; saw him there frequently; don't know whether he was employed; don't remember any complaints or suggestions from him.

Cross-ex'd.

Discharging in this way has been done before. I never saw it done myself. We discharge by a hook, by a shackle, and also
244 by chains. The hatch was first cut in the main deck—eight or ten feet abaft the main hatch; it was about ten feet forward of the place where the ship emerged from water at low tide, it was about four feet beneath the surface. We bored a hole, sawed out a piece, and then ripped up the plank by steam. It took a few hours to make this cutting. We had to make this opening for our hose and life lines; it was cut no larger than was required. We had four divers; three divers worked each day. My pay was $10 per day in gold. I received it. Only paid when I dived—sometimes four times, sometimes six times per week. I think diving was done about every day after we commenced. The mud I have spoken of had some consistency; it troubled us a good deal. The usual wages at home
245 was $10 in paper. Divers for an ordinary service can be got here for less money. I got ten dollars a day for working on the Washoe; was at work three weeks raising her; the water was 15 feet deep. I would not go on another job like the Aquila for three times what I got. Have worked in the breakers; did not furnish my own diving apparatus; had two helmets.

Direct resumed.

As this was the first work I had done on the coast here Capt. Merritt urged me to go to work and he would be of benefit to me afterwards. I desired to establish myself as a wrecker and diver, having no acquaintances here. Since that I have been engaged in nearly every important operation.

246 A. T. Fletcher:

Am agent of the New York underwriters; know claimants. After the Aquila had sunk they abandoned the ship and cargo to me as agent of the underwriters, which I did not accept. In pursuance of telegraphic instructions from the New York underwriters I took measures to save her. I employed Mr. Ryan to help me; paid him $1,000 for his services in the attempt to pump her out; an attempt was made by other parties to put a chain under her, but at no expense to me. I was instructed by the underwriters, after these failures, to wait for arrival of experts who would be sent from New York to attempt to save. Captain Merritt's party
247 accordingly took charge of the property with my consent and that of Donahue and Ryan, the contractors.

The expense of these abortive attempts was about $38,000 in gold coin. The ship lay in forty-eight or fifty feet of water forward, and about thirteen or fourteen feet aft, and at an angle listing off shore, so as to make it almost impossible to stand. The wreckers took charge; took out cargo, piece by piece, and I had it washed in fresh water; this cost me about $750; the lightering cost $5,000. Captain

Merritt paid for the lightering; the washing was necessary to preserve it. The Spring Valley Company were several hundred dollars for water. I took charge of cargo; I cleaned and scoured it;
248 painted it; put it in perfect order. I paid for this 20,000; the money was furnished by underwriters. I employed Mr. Ryan to superintend this cleaning, &c.; paid him $20 per day. Buildings were put up to receive cargo at my expense. After the salvage was effected, Donohue, Ryan & Secor revoked their abandonment, and without waiting to hear from the underwriters, took charge of the property and proceeded to build the vessel. When the wrecking was nearly done, I was made their agent. Before the wreckers went to work Mr. Ryan, in my presence, agreed to pay them in the same proportion as the underwriters did, i. e., to pay uninsured portion on the basis of the New York contract, under which Capt. Merritt came out. After the cargo was out, an arrangement was
249 made for salvage of the ship between Ryan and Merritt. Merritt was to receive 33⅓ per cent. of the value of the ship; this was paid. The same arrangement was made with respect to freight after deducting one-half. This was also paid. Ryan complained of Merritt's plan of saving the ship; he wanted to put chains under the ship. Merritt believed this to be impracticable. I thought so to, except that I feared, from Ryan's description of stowage, it would be impossible to break it out after the property was saved. Ryan declined to fulfil his agreement, and referred the matter to Secor, in New York; he said he had no power to settle and no funds. Donahue, Ryan & Secor have never paid any portion of the disbursements made by me.

250 *Cross-examined.*

I received a written notice of abandonment a day or two after the vessel sunk. I did not accept the abandonment; it is not usual for underwriters to accept abandonments. I said I would do all in my power to assist captain in saving the property. The first attempt was made by me in conjunction with the captain. I employed Mr. Ryan and furnished the funds. The reason the pumping failed was that a scuttle was open. It is admitted that the value was $400,000 in currency; of this 340,000 was insured; the salvage agreed to wreckers, was $110,000; one-half greenbacks and ½ in gold. The Columbian Insurance Comp'y, representing $15,000 of insurance, failed, and never paid their share; there was $60,000 uninsured. They also claim that Donahue & Ryan should pay the Colum-
251 bian Insurance Comp'y's share. Walter B. S. Jones is secretary to Coast Wrecking Co. John D. Jones is president of the Atlantic Company; not related that I know of. I heard of this contract about the middle of December. This 38,000 was spent in materials, preparing the pumps, canvas hose, stripping the ship, lighter's charges were exorbitant; men worked at night paid double; also for Sunday work. The lightering cost $5,000, paid by wreckers; the cargo was 16 or 1,700 tons. The vessel, as she lay off the

wharf, was not considered to have any valve. I think I was offered $20. Don't know the cost of the Aquila. After being raised she was sold at auction; she sold for about $4,900; she was probably worth about $30,000 before she left N. Y. Donahue, Ryan & Secor were the owners of the vessel, and the contractors for the Camanche. There has never been any settlement of the insurance between the underwriters. It cannot be until all the claims are in.

252

Direct resumed.

I consulted all the most experienced men here. My judgment was that the case was very difficult. I know that Capt. Merritt very much doubted whether he could manage it. He was desirous that the contractors should object, so as to give him an excuse for not taking hold of the job. A coffer dam was proposed, but I am satisfied that the property would have been ruined. The same result would have followed if we had succeeded in pumping her out, for the cargo would have been exposed to the air while we were discharging her. As it was, we cleaned every piece as soon as it was taken from under water and before it was exposed to the air for any length of time. Capt. Waterman's figures, 20,000, are simply ridiculous as an estimate of the probable expenses of saving the cargo. I advertised for bids to raise the Aquila. I got one for $5,000; it was so absurd that I paid no attention to it.

253

Gen. CAZENEAU,
Adjuster of Averages.

F. L. Currey:

Am a boiler-maker; foreman of Vulcan Iron Works. The Camanche was built in Jersey City, foot of S. 8th st. I was superintendent of the work built by Secor; the iron work of the hull and frame were put together. The engine boilers, turrett, pilot-house, smoke-stack, smoke-pipe, were also put together; the timber backing of the armor plates was not put up; it was cut so as to fit; the plates were marked and numbered. The streaks were lettered, and the plates in each streak numbered; each plate had its place; it would not fit any other. It was then taken down and put on board. The pilot-house and armor of smoke remained in entire. The pilot-house was the heaviest piece, about 26 tons; the next heaviest were the guns; they weighed about 21 tons; the boilers weighed about 20½ or 21 tons; the armor stack was the heaviest, about 14 tons. The bed plate of engine weighed about 7 tons; the armor plates weighed about 1,000 lbs. a piece; some were lighter, very few; the angle iron averaged about 15 lbs. to the running foot; they were in two or three pieces. I saw this material stowed; was in the hold of the vessel several times every day. If the materials had arrived here in good condition, would not have required to be marked over. It would depend how the stevedore took it out of the vessel.

254

255

I arrived here about two days before the Aquila arrived; employed to come out here and put her up. I superintended putting her to-

gether after the wreck. All the materials required cleaning. Salt water had effected the bright work a great deal. We painted the plates. When we came to put the ship together, the frame of the ship, the high floors—the kelsons were built and some broken—we had to heat them and work them; patch them when we couldn't weld them; had to bring them to a proper shape. In some cases this work was very heavy; can't say what proportion of frames had to re-
work. The time employed in reworking was separately kept
256 set down every day; had to rework some of the armor plates;
couldn't tell by mere observation that they were out of shape, unless badly out of shape. We had no mould with us. Some of the frames were broken. We commenced laying keel on the 1st day of July, 1864; finished in the latter part of January, 1865. We strapped the frames together where they were broke. About 300 men employed in putting her up. I was always of the opinion that the frames were injured while being hoisted out.

Cross-ex'd.

There were two turrett engines, a donkey engine, a blower engine, a vacuum engine, and the main engine.

After the vessel was taken down materials were put on a vacant
lot; remained there some two weeks or a month; then taken
257 down to the Aquila by teams; then stowed by a stevedore.

It is possible that in these various handlings some of the plates might have got bent. It does not very often happen. Our men are accustomed to handle these things; and when a piece required extra care we would go on ourselves with them. The plates were five feet square by one inch thick; weighed 40 lbs. to the square foot.

Cargo was thoroughly secured and wedged. Bought a great many cases of oak wedges.

Mr. Ryan took extra precautions, employed men by the day, not by the job.

I think the owners showed great skill and ability—great courage.

Direct resumed.

Worked on a sister-ship of the Camanche. The other iron-
clads on which I was engaged were built at the same yard as
258 the Camanche. A loft was put up, and a frame erected precisely similar to that of the ship, and the plates fitted to it. With the other monitors we curved the plates upon modles and then put them on the ship. If they didn't fit we blamed the carpenters, and made them put in a Dutchman.

The inspector inspected very closely; made us take out plates when he could get the end of his knife between them.

The angle iron was 4 inches by $\frac{1}{2}$ inch. I reported the extra work to Duff, the time keeper. I had no difficulty in discriminating between the work necessary belonging to the job and the extra work rendered necessary by the condition of the plates.

The furniture for the most part fell apart. It was reworked.

Cross-ex'd.

259 A good deal of the wood work was made here. The deck, plank, and stringers of the bow and stern.

I don't think our difficulty in fitting arose from inaccuracy of carpenter work done here.

Sam'l B. Ireland:

Have been engaged in diving 8 or 10 years. I have made the descent for the purpose of experiment; I was signal man. The first diving I saw here was in 1855, in the bay. Have [have] had to with ing with breakers. Ship Chateau Palmer; took up quicksilver in flasks; she was on the beach outside of Fort point; she had between-deck beams, but no between deck. The quicksilver was got out of the lower hold, stowed amongst the ballast. The men went down the main hatch. Quicksilver hoisted through main hatch.

260 Saw diving at wreck of Golden Gate. Can't see in the breakers. Our men dived at night; recovered boxes one night; over $100,000. The usual wages of a diver, from $10 to $14 per day. Can't see any in the waters of the bay. About $1,000 we get a good set of diving gear, including pump. We hoisted quicksilver flasks at wreck of Chateau Palmer, by putting in steel hook into hole in stopple of flask. At the Chateau Palmer we got 25 or 30 p. c.; at the Golden Gate we got 33⅓ p. c.

Thomas N. Cazeneau, average adjuster:

I suggested propriety of keeping account of extra work. I made up an account of the extra work from a book obtained by me from the book keeper.

Thos. N. Cazeneau, recalled:

261 I have made out a schedule of the furniture.

(Objected to; withdrawn.)

The insured had no claim, except losses, amounted to 25 p. c.; ship, &c., stranded. Certain articles were shipped by government on which freight was due $12,500 in currency. These articles had no connexion with the Camanche contract; they were guns, shot, and shells. Donahue, Ryan, and Secor received this freight, and paid salvors ⅓ of one half. Admitted that loss and damage to furniture, &c., was $6,000 in gold. The vessel was dismantled by Capt. Fletcher, her lower mast, bowsprit, and lower standing rigging. They enlarged the hatchway at the east to receive the cargo; it remained in same condition on the arrival of the ship. The deck cabin was cut away entirely. There was not cutting of cabin and main deck before wreckers ar-

262 rived. The cargo taken out before wreckers arrived. I think some cutting must have been done effecting this. The surveyors were Capt. Roxby, Capt. Haley, Capt. Brown, and Capt. Porter. The ship carpenters were Goodsall, Henderson, and Bell. I cannot mention any item of damage voluntarily incurred, which [which] was not necessarily incurred for the common safety, except

that I think they might have more fully discharged her before she was raised; she was very much strained by raising, owing to the weight of cargo and mud; the cargo turned out to be less than I supposed. I supposed the boilers might have been taken out; it would have been necessary to cut away further. Capt. Merritt's reputation is very high for skill as a wrecker. I have no doubt of his judgment and fidelity. The Coast Wrecking Co. is a perfect organization.

263 The damages to the vessel, by cutting up her deck houses, &c., and by straining and lifting her, were $27,000. In lifting she was strained throughout her entire construction; copper cross-wrinkled; 27,000 is nett; $\frac{1}{3}$ new for old is deducted. The damage, by collision, was $15,000. The wire jettings of the vessel aft were sawed before Captain Merritt arrived. Robert Roxby was one of the surveyors.

William Ireland:

Conducted two expeditions to the Golden Gate; saved, on 1st, $750,000. Had no difficulty in procuring divers; had submarine apparatus. Arrived here 9th January, 1864. In February, '64, there were divers and appratus here. I brought back 3. Smiley had an expedition about the same time; he had two divers with him

264 came back at the same time I did. He had divers apparatus. The wreck was in the breakers; saw the ship Aquila before Merritt began. I would have undertaken the job if I had got pay to suit me. I have heard some people say the would undertake it. Mr. Goodsall told me would have liked to undertake the job.

I live on Folsome, between 1st and 2d; frequently on the water front; saw Merritt at work a great many times; saw the manner of operating. I should rather take the Aquila for safety than the breakers. At the Golden Gate we were in danger of having the boats swamped; the diver would be drowned in that event. It took about double the quantity of lead to hold him in the surf. We went as near the surf as possible, and the driver went overboard and craw-

265 led into breakers. I don't consider diving on Aquila anything like as dangerous as that on Golden Gate. We lost two steam engines and lighters in the surf. They were anchored in five fathoms of water. The apparatus used by Merritt was the usual familiar apparatus. I was interested in the wreck of the Chateau Palmer; used submarine divers on her in 1856; she lay on the beach in the surf; had submarine appratus; she was rolling and working. Divers went down after hatch; should think diving more difficult and dangerous than on Aquila; her beams and rigging floating about. The ship was in motion more or less; the upper side of the 'tween decks was dry at low water; the lower hold was full of water; the divers worked through the same hatch as they discharged cargo from the

266 C. Palmer; had a greater list than Aquila, but not so much by the head; we worked off and on two or three months. I wrecked the Winfield Scott; used submarine divers; was there thirty days; had apparatus; this was in January, 1863; had two

divers. I think from my knowledge that divers could have been procured here to do the work Capt. Meritt performed; we did some similar diving in the Winfield Scott; sent up a shaft that weighed about a ton. The California divers were competent to perform the job; one of my divers worked for Capt. Merritt; his diving apparatus was similar to mine. Cost for one diver, from $700 to $1,000. There was nothing novel about Merritt's plan; it was the obvious way; would have been willing to undertake the job myself; I would
267 have undertaken the service for $75 or $80,000 in gold; made no particular estimate.

Capt. Roxby recalled.

William Ireland cross-ex.:

My regular business is that of a ship carpenter. I made no figures about my estimate of expenses; did not calculate the expense of ligtering.

George L. Porter:

Surveyed ship; agreed with Capt. Roxby.

Robert Wilson:

Carpenter on the survey; distinguished between damage done by collision and that by wreckers; estimated injuries occasioned by wreckers; deducted ⅓ new for old; I think we figured for the whole. $40 or $50,000. I think the larger part was caused by the
268 wreckers. I have been a diver since 1850; dived at the McKim. I raised her; dived at the Orient; dived under the Re'd Italia; Capt. Wilkinson and I would have taken the job if we could have got hold of it; went to see. Captain Fletcher heard parties were coming out from New York.

Peter Donahue:

I never agreed to pay Merritt according to the underwriters agreement; nor did Ryan, to my knowledge. Mr. Duff is in Humboldt. I did not estimate the exact cost of putting up the ship here until after she was sunk. Mr. Ryan and I talked over it. He insisted that if she came out in good order she could be put for $100,000. I concurred in this estimate. In fact it cost us to put her together about $167,000, including everything; this was gold. I think
269 that the additional expense by reason of the disaster was about $80,000. The guns can't be made short of 25 or 30 cents per lb. in gold. The guns would cost $24,640; the shot and shell before they were aboard, about 8 or 9 cents per lb. in currency; 200 tons of shot and shell.

We claimed an extra allowance on account of depreciation of currency and delay caused by gov't. Not many armor plates were bent; a good many of the ribs were broken; not 10 per cent.; more than 5 in No.

Thomas N. Cazeneau:

It was the understanding that the agreement should not prejudice the rights of any one in this suit. This is all the parties will admit.

Libellants call Charles Lougue:

270 I consider the service in the Aquila a great deal more dangerous than that on the Golden Gate. There we had only the surf to contend against, but on the Aquila there was danger of the pipes being cut.

C. V. S. Gibbs:

Was associated with Captain Fletcher. Mr. Wilson said in our office it would be impossible for divers to discharge cargo of the Aquila, and that the only way was to put chains under her. He never said to me that he was practical diver; had know Ryan. Before she was sunk he said he was going to sell her to raise money; asked my opinion of her value. I said about $30,000. He said he would be willing to sell her for that.

A. T. Fletcher:

271 Before the Merritt party came out I employed all the divers I could find; they were Martin Hezeltine, and one other. I could find no apparatus in the city; never heard of Wilson; The divers I employed had no apparatus. I went to Mare Island and obtained apparatus free of charge from the gov't at Mare Island. The S. F. Co. divers were at that time at the wreck of the Golden Gate. Martin went down outside the ship; they, none of them, remained down more than 20 minutes. Martin demanded $4,000 for attempting to stop leak, and $10,000 if he succeeded. He wouldn't go into the water for less than $4,000. I paid him this, though the effort failed. Wilson proposed to put chains around her. The plan seemed to me absurd. Before Merritt commenced Mr. Ryan and I had an understanding that he would pay the same as the underwriters.

272 He declined to sign the agreement; said it was unnecessary; that of course they would do just as the underwriters. I saw these pieces. I could swear that two ribs were broken; could not swear to 3. There might have been twenty out of shape. As to plates, it is impossible to tell, as they were constructed of all shapes; she might have had two hundred ribs. The Aquila rated 1½, I think. Some of the persons on the survey declined to sign it, because it did not represent the true state of things. It was ascertained that the vessel was condemnable from injuries by worms and by elements, without reference to the acts of the wreckers. It was my own opinion that the vessel was not in a condition to be repaired, in consequence of injuries of worms and

273 the elements. The decks were perfectly honey-combed; worms in the beams, carlines, water-ways, port side of bow; foremain and mizenmast more or less wormed.

The injury to the ship voluntarily was not so great as that accidentally done by straining in the attempts to raise her. I saw no lack of judgment on their part. I think no reasonable effort could have been made here to save the ship. The divers appeared to me to be incompetent. The only party I could find charged me $4,000 for making an attempt.

Cross-exam'd.

I mean to say I could find no divers here; they were on the wreck of the Golden Gate. I don't think you can procure a helmet. I think I advertised for proposals to save the property. I stopped all
274 efforts by telegraph of contracts made in New York. It is my candid opinion that if these parties had not come out here the Aquila would have been lying there yet. The job was about as much as thebest men we know anything of could do; it was the biggest job they ever undertook. I was apprehensive that an accident might occur and the divers refuse to work further. I don't know the value of shot and shell as estimated by gov't; was $5,000 after deducting the expense of cleaning. I remember no proposals from Ireland or Goodsell.

Cross-ex'd.

I obtained this valuation from Com'r Selfridge. Capt. Merritt never claimed to be the agent of the underwriters had not taken out more than 20 tons; but they were of very little value unless the Camanche was substantially saved.

275 *Chapter* 437.—*Exhibit referred to in judges notes on testimony.*

AN ACT to incorporate in the city of New York the Coast Wrecking Company, passed April 16, 1860.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. There shall be established in the city of New York a company, which shall be a body politic and corporate, to be called "The Coast Wrecking Company," of which Walter R. T. Jones, Charles H. Nelson, John D. Jones, H. Marshall, Samuel F. Butterworth, Isaac Bell, jr., Charles A. Lamontry and Jacob A. Westetell, of the said city, and such persons as they shall associate with themselves, as trustees under this act, not less than seven persons in all, shall be the first trustees.

276 SECTION 2. In addition to the general powers and privileges of a corporation, as the same are declared by the third title of the eighteenth chapter of the first part of the revised statutes, the corporation hereby created shall have power—

1st. To build, purchase, hire and own a vessel or vessels to be propelled by sails, steam, or other motive power, to be employed in towing, aiding, and protecting, and saving vessels and their cargoes wrecked or in distress, whenever such wrecks occur on the high seas or in the various arms of the seas and rivers running to the same, with power to make, purchase, hire and own pumps, bells, anchors, hawsers, warehouses, wharves, and all apparatus necessary in carrying on the said business, or in preserving such property.

Also to tow vessels, and to transport freight and passengers,
277 provided that nothing shall be herein construed to conflict with the rights of pilots as established by law.

2nd. To fix whose rates of compensation either by parole or by instruments in writing, either with or without seal, and to take all compensations, towages and salvage, which are customary and usual, and which by law and usage enure to private persons in towing and in saving and in taking care of wrecks, and wrecked and damaged property, and shall be entitled to and shall have the usual liens on such property, with the right to hold and pursue the same in the like manner and effect as said rights and remedies are and may of right be held and enforced by private parties.

278 SECTION 3. All the corporate powers of the said company shall be exercised by a Board of Trustees, and such officers, clerk and agents, as the trustees may from time to time appoint. It shall be the duty of the trustees on organizing the company to choose as officers of the company for the first year, a general agent and treasurer; they shall also choose three inspectors for the first election.

SECTION 4. The trustees, general agent, and treasurer, shall hold their respective offices for the period of one year, and until others are chosen in their stead; clerks and other special agents during the pleasure of the trustees. The general agent shall be ex-officio a trustee, with equal power in voting on all questions relating to the company.

SECTION 5. Vacancies happening in the number of trustees
279 or inspectors, or officers, by death, resignation, or other inability, may be filled for the remainder of the term by the board of trustees.

SECTION 6. The stock of said company shall be divided into shares of one hundred dollars each, which shall be personal property. The three trustees before first named, shall receive subscriptions to the same companies stock, and when the subscriptions shall amount to the sum of twenty-five thousand dollars, the company may be organized.

SECTION 7. The trustees shall have power to call in the said subscriptions whenever they deem it the interest of the company to have the same called in, until the whole sum subscribed shall have been paid in.

280 SECTION 8. An election of trustees and three inspectors of election shall be held within one year from the organization of the company, and one in each year thereafter; the trustees causing notices thereof to be given either by note to each stockholder, or by advertisement in the public papers of such election.

SECTION 9. The capital stock of the said company may be at any time by a vote of a majority of the stockholders, increased to a sum not exceeding three hundred thousand dollars.

SECTION 10. This act shall take effect immediately after its passage, and continue in force thirty-years.

STATE OF NEW YORK,
Office of the Secretary of State

I have compared the preceding with the original law on file
281 in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this fourth day of August, in the year one thousand eight hundred and sixty-five.

[SEAL.] ERASTUS CLARK,
Deputy Secretary of State.

282 Memorandum of agreement made and entered into this day of December, 1863, between the underwriters, parties of the first part, who shall sign the same, they being separate underwriters on the material and machinery with which to build the iron-clad gunboat Camanche, which material and machinery were laden on board the ship Aquila, and recently sunk with her in the harbor of San Francisco, and the Coast Wrecking Company of the State of New York, parties of the second part, withnesseth: The parties of the second part, for and in consideration of the sum of $110,000 dollars, to be paid to them on the conditions and in the manner hereinafter provided, covenant and agree with the parties of the first part to proceed without day to San Francisco, and there use all reasonable endeavors to save, raise, and convey to any convenient wharf designated by government in said port, the material and machinery of the gunboat Camanche, and recently sunken as aforesaid, and
183 deliver the same into the custody of such person as may be appointed by government to receive it, but such delivery shall in nowise work a forfeiture of any lien on said property, that the said parties of the second part may acquire by reason of the salvage service performed pursuant to this contract, but such lien shall continue until the payments are made as hereinafter provided.

It is hereby further agreed, that the entire salvage service hereby agreed to be performed shall be completed by the said parties of the second part, within the period of ten months from the commencement of the work, and in case of failure of the said parties of the second part to save the said material and machinery for the construction of the said gunboat within the said time, they shall, nevertheless, not be absolved from the performance of the said salvage service. but shall go
184 on and complete the same, and shall forfeit to the parties of the first part, ten per cent. of the said sum for which the said salvage service is to be performed, the said per centage being deemed liquidated damages to the parties of the first part for failure to perform the salvage service within the period aforesaid.

It is further agreed, that unless the said parties of the second part shall be actually at work upon and engaged in the attempt to save said cargo within the period of forty days from the date of this contract, the same shall be void at the option of the parties of the first part, who shall be at liberty to enter into any other contract without notice to the parties of the second part.

It is further agreed, that in the event that the parties of the second part shall be unable to save all the aforesaid material and machinery by the use of reasonable efforts to that end, but shall make a
285 substantial salvage thereof, then the said parties of the second part shall be entitled to the compensation hereunder.

And it is further agreed, that if the said parties of the second part shall fail substantially to save the said material and machinery, then and in that event, they shall not receive any compensation whatever, it being especially agreed that unless the said materials and machinery are substantially saved, the parties of the second part are not to receive any compensation or be entitled to any lien upon the said property, except as hereinafter provided.

It is further agreed, that the sum of money which shall, pursuant to the terms of this contract, become due to the parties of the second part, for [for] the salvage service to be by them performed hereunder, shall be paid to said parties of the second part in the following
286 manner; that is to say, after the said salvage service shall have been completed, the sum of money hereinbefore agreed to be paid shall be assessed upon the said material and machinery, taking the whole thereof as of the value of $400,000, and upon this value as a basis, each of the parties of the first part hereto shall contribute towards the sum of money due to the said parties of the second part, in the proportion that the sum insured by such party bears to the said $400,000. And each one of said parties of the first part shall pay to the said parties of the second part, such contributory sum, and upon such payment the lien of the parties of the second part to the extent of such payment, shall cease and determine. And the said parties of the second part shall not have any claim against said parties of the first part, jointly, but each of the said parties of the first part shall be answerable to said parties of the second part
287 only for their rateable proportion of the aforesaid sum.

And it is hereby further agreed that the said sum of $110,000 when it becomes due hereunder to the parties of the second part, as to the portions thereof due from the said parties of the first part shall be paid in the city of New York, and that each of the respective parties of the first part shall pay the one-half of their respective rateable proportions of the entire sum due hereunder from each in legal tender notes of the United States, and the other half part thereof shall be paid in gold coin.

And it is further agreed by the parties of the second part that they will enter into a contract with the owners of the cargo of the ship Aquila at 30 per cent., and with the owners of the cargo of the ship Aquila other than that hereinbefore described to save the same for one-third of the value thereof, the said owners stipulating that the value of the uninsured cargo when saved, shall not be less than
288 90 per cent. of its value when it arrived in San Francisco, provided the parties in interest agree thereto by signed these premises within forty days from the date hereof.

And it is further agreed, that if the said property hereinbefore described, shall be found by the said parties of the second part in the possession of any persons, so that the parties of the second part cannot obtain possession or control thereof, for the purpose of making the attempt to save the same, the parties of the first part shall pay to the parties of the second part, the expenses incurred by them under the contract, and five thousand dollars in addition thereto, and

thereupon this contract shall be at an end. The additional said sum shall be contributed for by the parties of the first part upon the principle and in the proportions hereinbefore provided.

It is further agreed, that in case the said material and ma-
289 chinery be not substantially saved, but only a part thereof be saved, and by reason of the non recovery from the wreck of the missing parts, the government, or the agent of the monitor, or the contractors, are not obliged to receive the parts saved, and decline to receive the same by the reason of the non saving of a part of the material and machinery; and in consequence thereof, the parts saved are obliged to be sold, then in lieu of the sum herein provided to be paid for saving, the parties of the first part are to pay, and the parties of the second part be entitled to receive thirty-three and one-third per cent. on the value of the property saved, to be paid out of the sales thereof.

In witness whereof, the parties to these presents have hereunto set their hands, and affixed their corporate seals the day and year first above written.

290 At a stated term of the District Court of the United States of America for the District of California, held at the court-room of the city of San Francisco, on Saturday, the tenth day of April, A. D. 1867.

Present: the Honorable Ogden Hoffman, district judge.

Decree.

THE COAST WRECKING COMPANY OF NEW YORK
vs.
THE MATERIALS, &C., OF THE CAMANCHE.

This cause having been heretofore brought on for hearing, and the court having been attended by the proctors and advocates of the respective parties hereto, and the testimony adduced by both parties, and the argument of the advocates of the respective parties
291 having been heard and duly considered:

Now, at this day, it is ordered, adjudged, and decreed that the libellants are entitled to have and receive for the salvage services mentioned in the libel in this cause the sum of twenty-four thousand and sixty-two dollars and twenty-five cents, ($24,062 25) with interest thereon, at the rate of seven per cent. per annum from the 15th day of July, A. D. 1864, to the date of this decree, to wit, the sum of four thousand three hundred and sixty-six dollars and nineteen cents, ($4,366 19,) amounting in all to the sum of twenty-eight thousand four hundred and twenty-eight dollars and forty-four cents, ($8,428 44) together with its costs, to be taxed herein, and that libellants have a summary judgment against Alexander McPherson and Charles S. Higgins, sureties on the bond for the re-
292 lease of said materials, &c., of the Camanche, in the sum of

seventeen thousand dollars in gold coin of the United States, that being the amount provided to be had by said sureties in and by their said bond.

OGDEN HOFFMAN, *Dist. Judge.*

Ent. April 10, 1867.

GEO. C. GORHAM, *Clk.*
By S. NEALL, *D. C.*

293 In the District Court of the United States for the district of California.

Notice of appeal.

THE COAST WRECKING COMPANY OF NEW YORK
vs.
THE MATERIALS, MACHINERY, &C., OF THE "Camanche," Peter Donahue, *et al.*, claimants.

GENTLEMEN: The claimants intend to appeal from the final decree af the court in this cause.

Yours, &c.

H. &. C. McALLISTER,

Dated, San Francisco, April 10, 1867.

To CASSERLY and BARNES, proctors for libellants, and GEORGE C. GORHAM, ESQ., clerk of the court.

Endorsed: Filed April 17th, 1867. Geo. C. Gorham, clerk, per H. F. Lardner, dep.

294 In the Circuit Court of the United States for the tenth Circuit Court in and for the District of California.

Appeal.

THE MATERIALS, MACHINERY, TOOLS, AND OTHER appliances of every description for constructing and equipping the iron-clad turretted-floating steam battery "Camanche," P. Donahue, *et al.*, claimants and appellants,
vs.
THE COAST WRECKING COMPANY OF NEW YORK, libellants and appellees.

To the honorable the Circuit Court of the United States for the tenth circuit in and for the district of California:

295 The appeal of the above-named appellants respectfully showeth, that on or about the 15th day of July, A. D. 1864, the above-named libellants exhibited their libel in the Dis-

trict Court of the United States for the district of California against the materials, machinery, and other appliances of every description for constructing and equipping the iron-clad turretted-floating steam battery "Camanche," claiming a salvage reward, and praying, among other things, for the reasons set forth in the said libel, that these appellants might be condemned to pay the demands of said libellants and costs in said libel mentioned.

That process out of said court having been served, and said appellants having appeared and filed their claim herein on the thirteenth day of December, A. D. 1864, the answer of appellants was filed herein, praying that said libel be dismissed, with costs, as by said libel and said answer will more fully appear.

That the said cause came on to be heard before the honora-
296 able Ogden Hoffman, judge of the said District Court, on or about the 17th and 18th days of December, A. D. 1866, upon the depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties, and the said judge having advised therein on the tenth day of April, A. D. 1867, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against appellants for salvage services the sum of seventeen thousand dollars, ($17,000,) besides costs of suit.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as the said libellants were not entitled to any salvage services in the premises.

And these appellants, for these and other reasons, appeal from the whole of the decree in favor of said libellants to the next Circuit Court to be held in the said district; and on said appeal they
297 intend to make new allegations in the Circuit Court and introduce the same and new and further proof.

And they pray that the said decree, and every part thereof, may be reversed with costs, and such other decree thereupon made as to the said Circuit Court shall seem just, and that the said appellees be condemned to pay these libellants their costs and damages in the premises.

Dated San Francisco, April 10th, A. D. 1867.

H. & C. McALLISTER,
Proctors for Claimants and Appellants.

Endorsed: Filed April 17, 1867. Geo. C. Gorham, cl'k, per H. F. Lardner, dep'y.

Service of a copy of the within appeal is hereby admitted this 13th day of April, 1867.

E. CASSERLY,
W. H. S. BARNES.

298 In the Circuit Court of the United States for the tenth circuit and district of California.

Bond on appeal.

THE MATERIALS, MACHINERY, TOOLS, AND OTHER appliances of every description for constructing and equipping the iron-clad turretted-floating steam battery "Camanche," P. Donahue, *et al.*, claimants and appellants,
vs.
THE COAST WRECKING COMPANY OF NEW YORK, libellants and appellees.

Know all men by these presents that we, Peter Donahue, Edward Martin, and Michael Reese, are held and firmly bound unto the above-named Coast Wrecking Company of New York in the sum of
299 twenty-two thousand ($22,000) dollars in United gold coin, to be paid to the said Coast Wrecking Company of New York, its successors and assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this twentieth day of April, A. D. one thousand eight hundred and sixty-seven.

Whereas the above-named materials, &c., of the "Camanche," Peter Donahue, et als., claimants, have prosecuted an appeal to the Circuit Court of the United States for the tenth circuit in and for the district of California, to recover the decree rendered in the above-entitled suit in the District Court of the United States in and for the district of California:

Now, therefore, the condition of this obligation is such that
300 if the above-named Peter Donahue, et als., claimants, shall prosecute the said appeal to effect, and answer all damages and costs if they shall fail to make good their said appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[L. S.] PETER DONAHUE.
[L. S.] EDWARD MARTIN.
[L. S.] MYLES D. SWEENY.

Sealed and delivered in presence of—
CUTLER MCALLISTER.

Endorsed: Filed April 20, 1867. Geo. C. Gorham, cl'k, by S. Neall, D. C.

301 U. S. Dist. Court.

Stipulation.

COAST WRECKING CO. OF NEW YORK
vs.
MATERIALS OF THE CAMANCHE.

The claimants may have five (5) days further time to prepare and file the supersedeas bond on appeal.

Miles D. Sweeny and Edward Martin are accepted as sureties on such bond. Bond to be in the sum of twenty-two thousand dollars United States gold coin.

Justification and verification waived.

Saturday, April 26th, 1868.

E. CASSERLY,
W. H. L. BARNES,
For Libe'ts and Resp'ts.

Endorsed: Filed, May 4, '67. Geo. C. Gorham, cl'k, per John O. Wheeler, dep.

302 UNITED STATES OF AMERICA, *District of California, ss*:

I, George C. Gorham, clerk of the United States District Court in and for the District of California, do hereby certify to the foregoing 270 pages, numbered from 1 to 270 both inclusive, contain a full, true and correct manuscript of the record of the proceedings and of the decision and judgment of said court. Of the documentary and other evidence upon which the same is founded on file in my office in case No. 186, upon the docket of said court, wherein the Coast Wrecking Company are the libellants against the materials of the Camanche.

Witness my hand and the seal of said court affixed at the city of San Francisco, this the 31st day of May, A. D. 1867.

[SEAL.] GEO. C. GORHAM, *Cl'k.*
P'r JOHN O. WHEELER, *Dep.*

303 In the Circuit Court of the United States for the district of California.

THE MATERIALS, MACHINERY, TOOLS, and other appliances of every description for constructing and equipping the iron-clad turretted-floating steam battery "Camanche," P. Donahue, *et al.*, claimants and appellants,
vs.
THE COAST WRECKING COMPANY OF NEW York, libellants and appellees.

I hereby certify the foregoing transcript to be the statement on appeal required by the fourteenth rule of this court, made and in accordance with a stipulation signed by the proctors for the respective parties hereto, and on file herein.

Dated San Francisco, August 3d, 1867.

STEPHEN J. FIELD,
Judge of U. S. Circuit Court, Ninth Circuit.

304 In the Circuit Court of the United States for the ninth circuit in and for the district of California.

THE MATERIALS, MACHINERY, TOOLS, and other appliances of every description for constructing and equipping the iron-clad turretted-floating steam battery "Camanche," P. Donahue, *et al.*, claimants and appellants,

vs.

THE COAST WRECKING COMPANY OF NEW York, libellants and appellees.

This cause having been heard at the present term of this court on appeal from the decree of the District Court of the United States for the district of California, on the transcript of the record of said court, and the pleadings and the arguments of the respective proctors read and submitted to the court, and due deliberation being had in the premises, and the court having ordered that the decree of the said District Court in favor of libellants be affirmed with costs and interest at seven per cent. per annum, and that a decree be entered accordingly:

Now, therefore, by virtue of the law, and by reason of the premises, it is ordered, adjudged and decreed by the court that
305 the libellants herein are entitled to have and recover for the salvage services mentioned in the libel in this cause the sum of twenty-eight thousand four hundred and twenty-eight dollars and forty-four cents, ($28;428 44,) with interest thereon, at the rate of seven per cent. per annum from the tenth day of April, A. D. 1867, together with their costs of appeal to be taxed herein, and that libellants do have a summary judgment against Peter Donahue, Edward Martin, and Michael Reese, sureties upon the bond given on appeal to this court from the said District Court in the sum of seventeen thousand dollars in gold coin of the United States, that being the amount provided to be paid by said sureties in and by their said bond, together with their costs to be taxed.

Rendered July 25th, A. D. 1867.

FIELD, *J.*

Filed July 25, 1867.

GEO. C. GORHAM, *Cl'k.*
By GEO. E. WHITNEY, *Dep. Cl'k.*

306 In the Circuit Court of the United States for the tenth circuit in and for the district of California.

THE MATERIALS, etc., of the CAMANCHE, P. Donahue, *et al.*, claimants and appellants,

vs.

THE COAST WRECKING COMPANY OF NEW York, libellants and appellees.

GENTLEMEN: Please take notice that the above-named claimants intend to appeal to the Supreme Court of the United States from the

judgment rendered herein on the twenty-fifth day of July, A. D. 1867.

Dated San Francisco, July 26, A. D. 1867.

H. & C. McALLISTER,
Proctors for Claimants and Appellants.

Messrs. E. CASSERLY & W. H. L. BARNES,
Proctors for Libellants and Appellees.
And GEO. C. GORHHAM, Esq.,
Clerk of said Court.

Due service admitted this 26 July, A. D. 1867.

E. CASSERLY,
W. H. S. BARNES,
Proc. for Appellees.

Endorsed: Filed 26th July, 1867. Geo. C. Gorham, clerk, by Geo. E. Whitney, dep. cl'k.

307 In the District Court of the United States for the district of California.

THE MATERIALS OF THE CAMANCHE, P. Donahue, *et al.*, claimant and appellants,
vs.
THE COAST WRECKING COMPANY OF NEW York, libellants and appellees.

It is hereby stipulated by and between the parties to this suit, that the transcript on appeal from the District Court of the United States for the district of California, now on file herein, shall be deemed and taken as the transcript on appeal to the Supreme Court of the United States from the decree rendered herein, July 25, 1867, and that statement of the testimony required by rule 14th of this court be, and the same hereby is, waived.

Dated San Francisco, July 29, 1867.

E. CASSERLY,
W. H. L. BARNES,
Proctors for Libellants and Appellees.
H. & C. McALLISTER,
Proctors for Claimants and Appellants.

Endorsed: Filed Aug. 3, 1867. Geo. C. Gorham, clerk, p. H. F. Lardner, dept.

308 In the Supreme Court of the United States.

THE MATERIALS, MACHINERY, TOOLS, AND OTHER appliances of every description for constructing and equipping the iron-clad turreted-floating steam battery "Camanche," P. Donahue, *et al.*, claimants and appellants,

vs.

THE COAST WRECKING COMPANY OF NEW York, libellants and appellees.

The appeal of the materials, etc., of the "Camanche," P. Donahue, et al., claimants and appellants, respectfully showeth: That on or about the fifteenth day of July, A. D. 1864, the above-named libellants exhibited their libel in the District Court of the United States for the district of California against the materials, machinery, and other appliances of every description for constructing and equipping the iron-clad turreted floating steam battery "Camanche," claiming a salvage reward, and praying, among other things, for the
309 reasons set forth in the said libel, that these libellants might be condemned to pay the demands of said libellants, and costs, in said libel mentioned.

That process issued out of said court having been served, and said appellants having appeared and filed their claim herein on the thirteenth day of December, A. D. 1864, the answer of appellants was filed herein, praying that said libel be dismissed, with costs, as by said libel and said answer will now more fully appear.

That the said cause came on to be heard before the Honorable Ogden Hoffman, judge of said District Court, on or about the 14th, 17th, and 18th days of December, A. D. 1866, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge, having advised thereon, on the tenth day of April, A. D. 1867, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against appel-
310 lants, for salvage services, the sum of seventeen thousand dollars, ($17,000,) in United States gold coin, besides costs of suit.

And that after such final decree said claimants duly appealed therefrom to the Circuit Court of the United States in and for the district of California, and the said cause was removed thereby into the said Circuit Court, and there tried anew; and such proceedings were held in the said Circuit Court that afterwards, on the twenty-fifth day of July, A. D. 1867, the said Circuit Court made a final decree in said cause, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of said Circuit Court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants appeal from the whole of said
311 decree of said Circuit Court to the Supreme Court of the United States, and respectfully pray that the said decree of the said Circuit Court, and the libel, answer, pleadings, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and the said decree of the Circuit Court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, August 2d, A. D. 1867.

H. & C. McALLISTER,
Proctors for Appellants.

312 The above appeal is hereby allowed in open court.
Dated San Francisco, August 2d, A. D. 1867.

FIELD, *J.*

Endorsed: In the Supreme Court of the United States. The materials, machinery, tools, and other appliances of every description for constructing and equipping the iron-clad turreted-floating steam battery "Camanche," P. Donahue, et al., claimants and appellants, *vs.* The Coast Wrecking Company of New York. Appeal. Filed Aug. 3d, 1867. Geo. C. Gorham, cl'k; P. H. F. Lardner, dep't. H. &. C. McAllester, proctors for claimants and appellants.

313 UNITED STATES OF AMERICA, *District of California, ss:*

I, George C. Gorham, clerk of the United States Circuit Court for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of the record of the proceedings and papers on file in my office in the within-entitled cause, wherein the materials of the Camanche, etc., P. Donahue, et als., are claimants and appellants, and the Coast Wrecking Company of New York are the libellants and appellees.

Witness my hand and the seal of said Circuit Court, affixed at San Francisco, this the 30th day of August, A. D. 1867.

[SEAL.] GEO. C. GORHAM, *Cl'k.*
JOHN O. WHEELER, *Dep't'y.*

O

Supreme Court of the United States.

THE MATERIAL OF THE "CAMANCHE,"

P. DONOHUE, *et al.*, CLAIMANTS,

Appellants,

vs.

THE COAST WRECKING COMPANY OF NEW YORK.

Brief for Appellants.

JOHN E. WARD,

Of Counsel.

Supreme Court of the United States.

THE MATERIAL OF "THE CAMANCHE," P. DONOHUE *et al.*, Claimants, *Appellants*, *vs.* THE COAST WRECKING COMPANY OF NEW YORK.	Appeal from the Circuit Court of the United States for the District of California.

Statement.

The ship "Aquila" sailed from New York on the 29th of May, 1863, having on board the materials and machinery of the monitor "Camanche," with shot, shells, guns, ordnance stores, &c.

The "Aquila" was the property of Donohue, Ryan & Secor, who were also the owners of the materials and machinery of the "Camanche."

This machinery and these materials were valued at $400,000; on which insurance had been effected in different insurance offices in the State of New York, amounting in all to the sum of $340,000.

The owners were their own insurers for the balance—$60,000.

The "Aquila" arrived in the port of San Francisco, and came to anchor in the afternoon of the 10th November, 1863. On the

15th November she left her anchorage and proceeded to Hathaway's wharf; alongside of which, at about 3 o'clock in the morning of the 16th, she sank, with her freight on board.

The owners abandoned both ship and cargo to the insurers.

A. T. Fletcher, the agent of the New York underwriters, assumed the management and control, and made efforts to have the vessel raised and her freight removed.

These efforts were continued until Fletcher received instructions from his principals, the underwriters in New York, to wait for the arrival of those who would be sent from that city to save the cargo.

The following is the text of an act of the Legislature of the State of New York, incorporating "The Coast Wrecking Company":

"An Act, to incorporate in the City of New York the Coast Wrecking Company, passed April 16, 1860.

"The People of the State of New York represented in Senate and Assembly, do enact as follows:

"Section 1. There shall be established, in the city of New York, a company which shall be a body politic and corporate, to be called 'The Coast Wrecking Company,' of which Walter R. T. Jones, Charles H. Nelson, John D. Jones, Chas. H. Marshall, Samuel F. Butterworth, Isaac Bell, Jr., Charles A. Lamont, and Jacob A. Westervelt, of the said city, and such persons as they shall associate with themselves, as trustees under this act, not less than seven persons in all, shall be the first trustees.

"Section 2. In addition to the general powers and privileges of a corporation, as the same are declared by the third title of the eighteenth chapter of the first part of the Revised Statutes, the corporation hereby created shall have the power;

1st. To build, purchase, hire, and own a vessel or vessels, to be propelled by sails, steam or other motive power, to be employed in towing, aiding and protecting, and saving vessels and their cargoes, wrecked or in distress, whenever such wrecks occur on the high seas, or in the various arms of the seas and rivers running to the same, with power to make, purchase, hire

and own pumps, bells, anchors, hawsers, warehouses, wharves, and all apparatus necessary in carrying on the said business, or in preserving such property.

"Also to tow vessels, and to transport freight and passengers, provided that nothing shall be herein construed to conflict with the rights of pilots as established by law.

"2d. To fix upon rates of compensation either by parol or by instruments in writing, either with or without seal, and to take all compensations, towages and salvages which are customary and usual, and which, by law and usage, enure to private persons in towing, and in saving and taking care of wrecks, and wrecked and damaged property; and shall be entitled to and shall have the usual liens on such property, with the right to hold and pursue the same, in the like manner and effect as said rights and remedies are and may of right be held and enforced by private parties.

"Section 3. All the corporate powers of the said Company shall be exercised by a Board of Trustees, and such officers, clerks, and agent as the trustees may from time to time appoint. It shall be the duty of the trustees, on organizing the Company, to choose, as officers of the Company, for the first year, a general agent and treasurer; they shall also choose three inspectors for the first election.

"Section 4. The trustees, general agent, and treasurer shall hold their respective offices for the period of one year, and until others are chosen in their stead; clerks and other special agents, during the pleasure of the trustees. The general agent shall be *ex officio* a trustee, with equal power in voting on all questions relating to the Company.

"Section 5. Vacancies happening in the number of trustees or inspectors, or officers, by death, resignation, or other inability, may be filled for the remainder of the term by the Board of Trustees.

"Section 6. The stock of the said Company shall be divided into shares of one hundred dollars each, which shall be personal property. The three trustees before first-named, shall receive subscriptions to the said Company's stock, and when the sub-

scriptions shall amount to the sum of twenty-five thousand dollars, the Company may be organized.

"Section 7. The trustees shall have power to call in the said subscriptions whenever they deem it the interest of the Company to have the same called in, until the whole sum subscribed shall have been paid in.

"Section 8. An election of trustees and three inspectors of election shall be held within one year from the organization of the Company, and one in each year thereafter; the trustees causing notices thereof to be given either by note to each stockholder, or by advertisement in the public papers, of such election.

"Section 9. The capital stock of the said Company may be at any time, by a vote of a majority of the stockholders, increased to a sum not exceeding three hundred thousand dollars.

"Section 10. This Act shall take effect immediately after its passage, and continue in force thirty years."

With the Company organized under the foregoing Act, the following agreement was entered into by the underwriters in New York interested in the "Aquila" and her cargo:

Memorandum of agreement made and entered into this day of December, 1863, between the underwriters, parties of the first part, who shall sign the same, they being separate underwriters on the material and machinery with which to build the iron-clad gun-boat "Camanche," which material and machinery were laden on board the ship "Aquila," and recently sunk with her in the harbor of San Francisco, and the Coast Wrecking Company of the State of New York, parties of the second part, witnesseth: The parties of the second part, for and in consideration of the sum of $110,000, to be paid to them on the conditions and in the manner hereinafter provided, covenant and agree with the parties of the first part, to proceed without delay to San Francisco, and there use all reasonable endeavors to save, raise, and convey to any convenient wharf designated by Government in said port, the material and machinery of the gun-boat "Camanche," recently sunken as aforesaid, and

deliver the same into the custody of such person as may be appointed by Government to receive it; but such delivery shall in nowise work a forfeiture of any lien on said property that the said parties of the second part may acquire by reason of the salvage service performed pursuant to this contract, but such lien shall continue until the payments are made as hereinafter provided.

It is hereby further agreed, that the entire salvage service hereby agreed to be performed shall be completed by the said parties of the second part, within the period of ten months from the commencement of the work; and in case of failure of the said parties of the second part to save the said material and machinery for the construction of the said gunboat within the said time, they shall nevertheless, not be absolved from the performance of the said salvage service, but shall go on and complete the same, and shall forfeit to the parties of the first part ten per cent. of the said sum for which the said salvage service is to be performed; the said per centage being deemed liquidated damage to the parties of the first part for the failure to perform the salvage service within the period aforesaid.

It is further agreed, that unless the said parties of the second part shall be actually at work upon and engaged in the attempt to save said cargo within the period of forty days from the date of this contract, the same shall be void at the option of the parties of the first part, who shall be at liberty to enter into any other contract without notice to the parties of the second part.

It is further agreed, that in the event that the parties of the second part shall be unable to save all the aforesaid material and machinery by the use of reasonable efforts to that end, but shall make a substantial salvage thereof, then the said parties of the second part shall be entitled to the compensation hereunder.

And it is further agreed, that if the said parties of the second part shall fail substantially to save the said material and machinery, then and in that event they shall not receive any compensation whatever; it being especially agreed, that unless the said materials and machinery are substantially recovered, the parties of the second part are not to receive any compensation,

or be entitled to any lien upon the said property, except as hereinafter provided.

It is further agreed, that the sum of money which shall, pursuant to the terms of this contract, become due to the parties of the second part for the salvage service to be by them performed hereunder, shall be paid to said parties of the second part in the following manner, that is to say: after the said salvage service shall have been completed, the sum of money hereinbefore agreed to be paid, shall be assessed upon the said material and machinery, taking the whole thereof as of the value of $400,000; and upon this value as a basis, each of the parties of the first part shall contribute towards the sum of money due to the said parties of the second part, in the proportion that the sum insured by such party bears to the said $400,000; and each one of said parties of the first part shall pay to the said parties of the second part such contributory sum, and upon such payment the lien of the said parties of the second part, to the extent of such payment, shall cease and determine. And the said parties of the second part shall not have any claim against said parties of the first part, jointly; but each of the said parties of the first part shall be answerable to said parties of the second part only for their rateable proportion of the aforesaid sum.

And it is hereby further agreed that the said sum of $110,000, when it becomes due hereunder to the parties of the second part, as to the portions thereof due from the said parties of the first part, shall be paid in the City of New York, and that each of the respective parties of the first part shall pay the one-half of their respective rateable proportions of the entire sum due hereunder, from each, in legal tender notes of the United States, and the other half-part thereof shall be paid in gold coin.

And it is further agreed by the parties of the second part, that they will enter into a contract with the owners of the cargo of the ship "Aquila," at 30 per cent.; and with the owners of the cargo of the ship "Aquila" other than that hereinbefore described, to save the same for one-third of the value thereof, the said owners stipulating that the value of the uninsured cargo, when saved, shall not be less than 90 per cent. of its value

when it arrived in San Francisco, provided the parties in interest agree thereto, by signing these premises within forty days from the date hereof.

And it is further agreed, that if the said property hereinbefore described, shall be found by the said parties of the second part in the possession of any persons, so that the parties of the second part cannot obtain possession or control thereof, for the purpose of making the attempt to save the same, the parties of the first part shall pay to the parties of the second part the expenses incurred by them under the contract, and five thousand dollars in addition thereto, and thereupon this contract shall be at an end. The additional said sum shall be contributed for by the parties of the first part, upon the principle and in the proportions hereinbefore provided.

It is further agreed, that in case the said material and machinery be not substantially saved, but only a part thereof be saved, and by reason of the non-recovery from the wreck of the missing parts, the government, or the agent of the monitor, or the contractors, are not obliged to receive the parts saved, and decline to receive the same by reason of the non-saving of a part of the material and machinery, and in consequence thereof the parts saved are obliged to be sold, then in lieu of the sum herein provided to be paid for saving, the parties of the first part are to pay, and the parties of the second part be entitled to receive, thirty-three and one-third per cent. on the value of the property saved, to be paid out of the sales thereof.

In witness whereof, &c., &c.

In pursuance of this agreement, Israel T. Merritt, with other employees of the Coast Wrecking Company,—the whole party consisting of Merritt, one assistant, one engineer, four divers, five men and one clerk, numbering in all thirteen,—sailed from New York, in December, 1863, and arrived in San Francisco on the 17th January, 1864.

On the 23d of the same month they took possession of the "Aquila" as she lay sunken at the dock.

Some additional aid seems to have been employed in San Francisco, so that about fifteen men may be said to have been engaged at the work.

In the month of June the contract had been fulfilled, the materials and machinery of the "Camanche" saved and delivered as per agreement, and the Coast Wrecking Company paid in full by the underwriters, according to the terms of their agreement, except the sum of $15,000 (*i. e.* $7,500 in gold, and $7,500 in currency), which was not paid in consequence of the failure of one of the insurance companies.

Transcript of Record.

For the services thus rendered by the libellant it has received, and had received before its libel was filed, the following sums:

For saving the material and machinery of the "Camanche".....$95,000

One-half in gold and one half in currency—that is to say:

$47.500 in gold.
47,500 in currency.

Gold had risen from December, 1863, when the contract was made, to May, 1864, when the contract was completed, from 148 to 175 per cent.

This payment in currency, therefore, was equivalent to: $47,500 in gold *a* 175.....$83,125 00
and the other half in currency..... 47,500 00

Total amount in currency paid on contract, $130,625 00
33⅓ per cent. on the value of the ship ($4,900)..... 1,633 33
See Trans. Record, p. 78, *fol.* 249; *p.* 79, *fol.* 252.
33⅓ per cent. on one-half the freight $(12,500) $6,250..... 2,083 33

$134,341 66

The Columbian Insurance Company, representing $15,000, having failed, did not comply with its contract.

To recover this sum and salvage on the $60,000 uninsured, this libel was filed; or the libel seems to have been filed originally to recover the $15,000 not paid by the Columbian Insurance Company.

The materials were discharged from attachment upon a bond of $17,000, an amount sufficient to pay the contract of the Columbian Insurance Company, and the probable costs thereon.

See Trans. Record, p. 21, *fol.* 66.

The learned Judge of the District Court, in framing his decree, awarded salvage, both for the amount unpaid by The Columbian Insurance Co. ($15,000) and for percentage on the uninsured portion of the cargo ($60,000.) These two items formed the basis of his decree for the sum of $24,062 $\frac{25}{100}$ with interest at 7 per cent. from the commencement of the suit.

See printed decision of Judge Hoffman, p. 29.

From this decree an appeal was taken by the claimants to the Circuit Court of the United States for the Tenth Circuit, in and for the District of California.

On the 25th July, 1867, this decree was affirmed by Mr. Justice Field.

To reverse that decision the appellants are now before this Court.

POINTS.

I.—THE LIBELLANT IN THIS CASE CANNOT BE A SALVOR.

(*a.*) A salvor is one who renders *personal* service.

(*b.*) In the case of the "Lively," an agent, at a seaport where a vessel had run ashore, being applied to by the master, and having hired and employed persons to unload the vessel and get her afloat, sued as a salvor. It was held that his claim could not be sustained. Dr. LUSHINGTON, giving judgment, said: "The whole records of this Court show that a claim of this description cannot be allowed. * * * If I were to sanction a claim of this description, the inevitable consequence would be this—that in every case where an accident occurred in the neighborhood of the various seaports of this country, and any agent was applied to, to hire a steamboat or hire sailors to go on board to render assistance, he would be entitled to come to this Court and sue as if he were himself a salvor, he personally doing nothing to effect the salvage. I believe, over and over again, when such attempts have been made—and there have been two or three in my experience—every Judge of this Court has set his face decidedly against them."

6 *Notes of Cases in Eccles. & Mar. Courts, H. T.*, 1848 *to H. T.* 1849, *p.* 206.

(*c.*) In the case of the "Charlotte," it was distinctly held, that no claim for salvage remuneration, properly

so-called, can be maintained by parties not personally engaged in the service. Dr. LUSHINGTON, in giving judgment, said : " I now come to the other point, namely, who are the salvors? Two of the persons by whom the claim is made, are William and John Thomas. Why? On the ground that they had command over the boats and the command over the crews, and sent them out—but did not go themselves. Is that a salvage service? I apprehend clearly not, and that principle has been laid down. It is alluded to by Lord Stowell in the 'Vine,' but though he merely alludes to it in that case, it is a principle which has been settled over and over again, from the earliest period of my practice in this Court. The principle is this, that a party is not entitled to be considered as a salvor who stays on shore and sends his own boats and his own crews. * * * Lord Stowell laid down, that, in order to entitle a person to claim as salvor, he must have been personally engaged in the service; but he also laid it down, that persons contributing to a salvage service by furnishing boats or other articles should be entitled to remuneration, not as salvors, but for the use of the articles they supplied. That is the general principle, and from that principle I am not prepared, in the slightest degree, to recede."

6 *Notes of Cases in Eccles. & Mar. Courts, H. T.*, 1848, *to H. T.*, 1849, 279.

(*d*) By the 2d section of the act of incorporation, power is given to the Coast Wrecking Company " to fix their rates of compensation either by parol or by instruments in writing, either with or without seal, and to take all compensations, towages and salvage, which are customary and usual, and which by law and usage enure to *private persons* in towing and in saving and in taking care of wrecks, and wrecked and damaged property, and

shall be entitled to and shall have the usual liens on such property, with the right to hold and pursue the same *in the like manner and effect as said rights and remedies are and may of right be held and enforced by private parties.*"

Act of Incorporation. Transcript of Record, p. 86, *fol.* 277.

(*e.*) In the case of "Thos. Marshall *et al. v.* The British ship 'Stratton Audley'" her tackle, cargo, &c., Judge Blatchford says, "nor can the corporation" (meaning this very "Coast Wrecking Company") "itself be a salvor. It cannot hire persons on wages and claim salvage for services rendered by those persons."

Vide decision of Judge Blatchford, printed in addenda.

(*f.*) In the case of "The Coast Wrecking Co. *v.* The Steam ship 'Morning Star,'" this principle is affirmed by Mr. Justice Nelson.

Vide Mr. Justice Nelson's opinion, printed in addenda.

See also Judge Betts' decision, printed in addenda.

II.— IF THIS LIBELLANT CAN BE A SALVOR, IT IS NOT THE SOLE SALVOR; AND PAYMENT TO IT WOULD BE NO PROTECTION TO THE CLAIMANTS AGAINST ITS EMPLOYEES:

(*a.*) In the "Lustre" case, where, by express stipulation and agreement, the owners and underwriters were to be held answerable for the payment of the stores expended or damaged, it was held, that even this agreement did not bar the right of the officers and crew to salvage compensation.

3 *Haggard, Adm. Rep.*, 154.

(*b.*) In the case of the "Centurion," Judge Ware said: "In the present case, as the service in which their vessel was employed was not embraced within the contract with the crew, and was one which might have been attended with great peril, I am clear that the crew were entitled to a specific compensation beyond the rate of their wages for the time."

Ware's Reports, 483.

(*c.*) In the case of the "Britain" an agreement was entered into between the masters of the salving vessel and the vessel salved, to the following effect: "That it shall be left to the decision of arbitrators, to be named by each party, to fix the amount of remuneration that is due Sulling, the master of the 'Fortitude,' as well for his vessel as for himself and his crew, for the services rendered and loss of time, and likewise what shall be due them in indemnification of the expenses incurred by having put into the harbor of New Deep: and both parties renounce the right of any higher appeal." The arbitrators awarded the sum of £420, which was duly paid by the owners of the salved ship. Yet upon a libel by the crew of the salving vessel, setting forth that they had not been paid for their services, Dr. Lushington, in giving judgment, said "The question then, which I have to determine, is, how far this agreement is conclusive upon the parties promoting the present suit. Now, with respect to the master and owner of the 'Fortitude,' it would, I conceive, be decidedly conclusive; as it was clearly competent for the master within the scope of the authority committed to him, to bind the interest of his employers, and *a fortiori*, his own. With regard to the interest of the crew, however, I do not think that, according to any principles of justice, the master was possessed of any such authority." And he awarded the sum of £383 11*s.* 6*d.* (upon the basis of the arbitrators' award) "to be paid by the owners of the 'Britain,' and they must recover from the

owner of the 'Fortitude' the sum which has already been paid by them into his hands."

1 *William Robinson*, 40.

(*d.*) In the case of the "Sarah Jane,"—where salvage of £800 was paid to the master of the salving vessel, under an agreement between the owners and masters of such vessel and the owner of the vessel salved—action was brought by some of the crew of the salving vessel, who were dissatisfied with the distribution of the £800 so paid: and the defence of the owner of the vessel salved—"that the salvage remuneration had been settled under agreement, and that the master of the salving vessel, who received the money and signed the receipt, was a part owner, and that the other owners were also present at, and assenting to the settlement in question,"—was overruled by the Court, Dr. LUSHINGTON concluding his judgment in these words: "I regret much the hardship that will be experienced by the owners of the 'Sarah Jane,' in thus being called upon, a second time, to pay a salvage remuneration. At the same time, I hope it will be a warning in future cases, that owners cannot safely enter into a compromise of this description, which includes the interests of all persons that have rendered service to their vessel, without procuring a release from all parties interested, or incurring a risk of the consequences. In the present instance, the owners of the 'Sarah Jane' have chosen to encounter the risk of these consequences, and these consequences they must bear; for I cannot, as a matter of indulgence to them, inflict legal hardship upon others."

2 *William Robinson*, 110.

(*e.*) Professor Parsons, in his recent elementary treatise, after examining all the authorities on this point, says: "The interest of co-salvors is not joint, but several, and payment or satisfaction to any one is not so to any other.

If, therefore, payment is made to the master, although his receipt would bind himself and his owners, and an action would lie against him by the seamen for their shares, yet it is also true that the seamen may bring an action against the property saved if the settlement was made with the master without their consent."

Parsons on Shipping & Adm., Vol. 2, pp. 260, 261.

III.—THIS IS NOT A CASE OF SALVAGE SERVICE. A CONTRACT WAS MADE FOR A SUM CERTAIN, IN CONSIDERATION OF WHICH THE SERVICE WAS TO BE PERFORMED.

(*a.*) Salvage means a compensation earned by persons who *voluntarily* assist in saving a ship or her cargo from peril.

(*b.*) In the case of the "Calypso," Sir CHRISTOPHER ROBINSON said, "All salvage is founded on the equity of remunerating spontaneous services."

2 *Haggard, Adm. Rep.*, 217.

And again, "Considering all salvage to be founded on the equity of remunerating private and individual services, a court of justice should be cautious not to treat it on any other principle."

Idem, 218.

(*c.*) In the case of the "Neptune," Lord STOWELL defines a salvor to be "a person, who, without any particular relation to a ship in distress, proffers useful service, and gives it as a *volunteer adventurer*, without any pre-existing covenant connecting him with the duty of employing himself for the preservation of that ship."

1 *Haggard, Adm. Rep.*, 236.

(*d.*) In the "Mulgrave" case, Lord STOWELL held, that an agreement for a sum certain vitiates any claim for salvage; and would not consider the question where a contract existed.

2 *Haggard, Adm. Rep.*, 77.

(*e.*) In the case of the "Ellen & George," Dr. LUSHINGTON, in rendering the decision of the Court, said: "The principle on which the Court acts is, that, if satisfied that any agreement has been made, it will carry it into effect, unless totally contrary to justice and the equity of the case;" and, in conclusion, tersely said, "I pronounce for the agreement."

1 *Swabey*, 369.

(*f.*) In the case of "The Firefly," upon a defence to a claim for salvage, a parol agreement was alleged to have been made by the master of a stranded vessel with the salvors, during a raging storm, and whilst both parties were on board their respective crafts. There was a total denial of such an agreement on the part of the alleged salvors, and the testimony *pro et contra* was evenly balanced. Yet the agreement was sustained; the same Judge declaring, that, "In such case, the first question is, whether any agreement at all is proved; next, whether it is so far consistent with equity that the Court will uphold it. Upon looking at the affirmative evidence, as compared with the negative evidence, it is impossible not to be satisfied that the agreement was in fact made; and, though it seems a hard bargain, it is not such as the Court would be justified in setting aside. I must pronounce for the agreement, and, as a tender was made, with costs."

1 *Swabey*, 241.

(*g.*) In the case of the "Jonge Adries" the Court decided that an agreement made with salvors should not be lightly set aside, either on the ground that some fact

of an immaterial character, relating to the state of the vessel, was unknown or concealed from the salvors, or that the weather subsequently became tempestuous, which rendered the service more onerous than might have been contemplated by the salvors; and in pronouncing judgment, used these emphatic words, "the claim for salvage is barred by the agreement."

1 *Swabey*, 226.

(*h.*) In the case of the ship "Versailles," Judge Curtis said: "if there was such a contract fairly made, I do not think salvage could be claimed."

1 *Curtis*, 360.

(*i.*) In the case of the "Independence," Judge CURTIS said: "In my judgment, a contract, to be paid at all events, either a sum certain, or a reasonable sum, for work, labor and the hire of a steamer or other vessel, in attempting to relieve a ship in distress, without regard to the success or failure of the efforts thus procured, is inconsistent with a claim for salvage; and when such a contract has been fairly made, it must be held binding by a Court of Admiralty, and any claim for salvage disallowed."

2 *Curtis*, 350.

IV.—THE AMOUNT ALLOWED IN THIS CASE VIOLATES THE ESTABLISHED PRINCIPLES OF LAW AND JUSTICE REGULATING COMPENSATION FOR SALVAGE.

First.—The amount awarded violates the settled principles of law.

(*a.*) If the contract made between the parties does not totally destroy the claim for salvage, it certainly fur-

nishes the rule by which the parties themselves should be governed.

(*b.*) By the agreement between the Coast Wrecking Company and the underwriters, the amount was regulated and fixed. "The sum of money hereinbefore agreed to be paid shall be assessed upon the said material and machinery, taking the *whole* thereof as of the value of $400,000, and upon *this* value as a basis, each of the parties of the first part hereto shall contribute toward the sum of money due to the said parties of the second part, in the proportion that the sum insured by such party, bears to the said $400,000;" "And each of the said parties of the first part shall pay to the said parties of the second part such contributory sum; and upon such payment the *lien* of the parties of the second part, to the *extent* of such payment, shall *cease and determine.*" "And it is further agreed by the parties of the second part, that they will enter into a contract with the owners of the cargo of the ship 'Aquila,' at thirty per cent., and with the owners of the cargo of the ship 'Aquila,' *other than that hereinbefore described*, to save the same for one-third the value thereof."

Transcript of Record, p. 88, *fols.* 286, 287.

(*c.*) This agreement is for raising and savi g the *materials and machinery* of the gun-boat "Camanche," for the sum of $110,000, one-half to be paid in legal tenders, and one-half in gold.

It is an agreement to be paid that sum upon the entire valuation of the whole of the machinery.

The lien of the libellant is to cease and determine upon the whole machinery, on the payment of the whole sum stipulated, for or to the extent of such payments as might be made.

The libellant covenanted that it would agree with the owners of the cargo of the ship "Aquila," *other than*

that hereinbefore described, to save the same for one-third of the value thereof.

Such an agreement was actually made. Fletcher says: "Before the wreckers went to work, Mr. Ryan, in my presence, agreed to pay them in the same proportion as the underwriters did. * * Before Merritt commenced, Mr. Ryan and I had an understanding that he would pay the same as the underwriters."

Transcript of Record, p. 78. *fol.* 248.
Do. do. p. 84, *fol.* 271.

Now, with this express agreement:

1. Drawing a distinction between all the materials and machinery of the gun-boat "Camanche," and other portions of the cargo;

2. That it should all be saved for the sum of $110,000;

3. That the lien of the libellant upon such material and machinery should cease and determine upon the payment of the said sum or to the extent of such payment;

What possible claim can the libellant make for a larger sum than the $110,000 agreed to be paid it for the saving of these materials and this machinery?

The testimony discloses the fact that it has been paid the sum of $95,000 on account of these materials and this machinery; that it has been paid full salvage upon the ship and the rest of the cargo, upon which there is now no pretext for a claim, leaving still due it $15,000, one-half in legal tenders and one-half in coin, which has not been paid in consequence of the bankruptcy of one of the insurance companies.

The Judge, in the Court below, has decreed that claim-

ants should pay this amount, and in defiance of the agreement, that they should also pay an additional salvage on the materials and machinery of the "Camanche" to the extent of the value of $60,000.

Second. The amount awarded violates the principles of justice.

(*a.*) Agreements for salvage are not allowed to be made by the owners and masters of vessels to the detriment of the owners of the cargo, and so *vice versa.* An arrangement made with the owners of the ship to get a large salvage at the sacrifice of the cargo, or with the owners of the cargo, at the sacrifice of the ship, would be an encouragement to fraudulent bargains.

The "Westminster," 1 *W. Robinson,* 235.

Such was the contract made in this case, and in that spirit the contract was carried out. Merritt, the captain, or head of the operators of the Wrecking Company, when asked "why could you not have raised the ship and cargo all together, in the mode in which you finally raised the ship?" answered, "I did not dare to take the risk in the time I was limited to."

Transcript of Record, p. 53, *fol.* 165.

On his cross-examination, to the question, "What do you mean by the expression in your direct-examination, 'the time I was limited to?'" he answered, "I was limited to a certain time by the contract under which the Company was working on this job."

Transcript of Record, p. 61, *fol.* 190.

By the terms of that contract, if the materials and machinery were not saved, and the work agreed upon completed within the period of ten months, the Coast Wrecking Co. was not absolved from the performance of the said

service, but was required to go on and complete the same, forfeiting ten per cent. of the said sum agreed to be paid, which should be deemed liquidated damages for failure to perform the service within the period agreed on.

Transcript of Record, p. 87 *fols.* 183, 184.

N. R. Brewer says, "The great object was to attend to the cargo in preference to anything else."

Transcript of Record, p. 15, *fol.* 47.

Poole says, "From what engineers say, the machinery would have been spoiled if it had remained under water much longer."

Transcript of Record, p. 40, *fol.* 129.

Merritt, as an excuse for not lifting vessel and cargo together, says, "If I had attempted to do it in this way, that is, lifting it altogether, at that season of the year, any failure or delay would have resulted in the destruction of the cargo."

Transcript of Record, p. 53, *fol.* 166.

In assessing the salvage upon the ship and cargo, the usual rule of Court is, to take the whole value of the ship and cargo, and assess the amount of remuneration upon the whole, each paying its due proportion.

Marvin on Wreck and Salvage, Sec. 120.

The learned Judge, in the Court below, based his decision upon the extent of the services rendered by the libellant, and the benefit of such services to the claimants. These principles are correct, where there is no special contract. In this case there was such a contract.

Abandoning, however, that contract, what would be the respective rights and obligations of libellant, and claimants, for services rendered by the one and benefits received by the other, as disclosed by the evidence in this cause?

First.—What were the services rendered by the libellant, and what has it received for those services?

On the arrival of its employees at San Francisco, a portion of the materials and machinery had already been saved from the wreck.

For saving the materials and machinery of the "Camanche," alone, in addition to the payments received by it for saving the rest of the cargo and the vessel, it has received:

$47,500 in gold—equal in currency, at the time of payment, to	$83,125
And in currency	47,500
Total	$130,625

What benefits have the claimants derived from the services of the libellant?

The entire value of the materials and machinery of the "Camanche," on board the "Aquila," has never been estimated, at any time, over $400,000—$340,000 of which had been insured. Only $60,000 in currency was at the risk of the owners. Giving the libellant, then, a full one-third of all the value of the property which it had saved for the claimants, the decree would only have been for $20,000 in currency. But the learned Judge has abandoned this true and only rule for adjusting salvage, and has taxed the claimants upon, not the value of the property saved, but the supposed *profits* which the claimants might thereafter acquire from that property. As unjust and as erroneous as this theory would be, even that will not sustain the decree for salvage which he has rendered. That decree seems to have been rendered upon the idea that the materials and machinery of the "Camanche" were worth $400,000 in currency; that it would have cost $100,000 to have put them together; that there was a contract with the Government for the sale of the "Camanche," when constructed, for the sum of $640,000, and that thus $140,000, or that sum less the additional cost arising from the injury to the materials, had been saved to the claimants.

(*a.*) All the materials and machinery of the "Camanche" were not sent by the "Aquila."

Yornbohm, engineer in the United States service, says, "All the 'Camanche' was not in the 'Aquila'; the fire backing was got out here; some iron hatches and patent lights came out across the Isthmus, steering gear, steering wheels."

Transcript of Record, p. 73, *fol.* 230.

Donohue says, "A good deal of the wood work was made here" (in California).

P. 81, *fol.* 289.

(*b.*) The materials and machinery which were saved, were saved in such an injured condition as greatly to enhance the cost of building.

Yornbohm says, "The cargo was considerably damaged. The cost of cleaning up all the materials was $20,000 in gold. The plates were bent; almost every plate and rib required more or less work to make them fit. A great many pieces were damaged so that they could not be used."

Transcript of Record, pp. 72, 73, *fols.* 229, 232.

Currey, who was the mechanic employed to build the "Camanche," says, "All the materials required cleaning. The salt water had affected the bright work a great deal. We painted the plates. When we came to put the ship together, the frame of the ship, the high floors, the kelsons were bent, and some broken. We had to heat them and work them; patch them, when we could not weld them and bring them to a proper shape. In some cases this work was very heavy. Can't say what proportions of frame we had to re-work. The time employed in reworking was separately kept and set down every day, Had to re-work some of the armor plates. Couldn't tell by mere observation that they were out of shape, unless

badly out of shape. We had no mould with us Some of the frames were broken. We commenced laying keel on 1st July, 1864; finished in the latter part of January, 1865. We strapped the frames together where they were broken. About 300 men employed in putting her up. I was always of opinion that the frames were injured while being hoisted up."

Transcript of Record, p. 80, *fols.* 255, 256.

We are prepared, by this testimony, for the statement of Donohue, that the cost of putting the materials together was $167,000 in gold, which, at the time of the completion of the "Camanche," in December, 1864, was not less than 225 premium, equal in currency to $375,750.

If, therefore, all the materials and the machinery of the "Camanche" had been on board the "Aquila," and they had all been saved by the libellant, and the whole machinery was worth only $400,000, and it cost the additional sum of $375,000, making a total of $775,750, and the claimants were under contract to deliver the "Camanche" to the Government for $640,000, there has been a loss inflicted upon them by the libellant of $137,750, without any reference to the injury inflicted on the "Aquila," which swells the sum beyond $150,000. If the cargo had never been disturbed, and the materials and machinery of the "Camanche" had been totally lost, the loss of the claimants would have been—

Uninsured portion of the materials and machinery of "Camanche"	$60,000
Loss by failure of one of the underwriters...	15,000
Total loss.....	$75,000

A gain or saving to them, as compared with the loss inflicted by the libellants, of about $60,000.

V.—THE DECREE IS VAGUE AND UNCERTAIN.

It purports to give to the libellant only $24,062$\frac{25}{100}$, principal, and $4,366$\frac{19}{100}$ interest, amounting, in all, to the sum of $28,428$\frac{44}{100}$, in currency.

Whereas, if enforced, it will actually give about $35,228$\frac{44}{100}$.

It awards $28,428$\frac{44}{100}$, principal and interest, in currency, as all the salvage to which the libellant is entitled.

But it orders that $17,000 (on account of the whole award) must be at once paid by the sureties of the claimants in gold.

Gold may be supposed to be 40 per cent. more valuable than currency.

The decree does not provide that the $17,000—the portion of the salvage which is to be paid by the sureties—shall first be reduced to its value in currency, and then deducted from the $28,428$\frac{44}{100}$.

It thus leaves the $17,000, *in gold*, to be deducted from the $28,428$\frac{44}{100}$, in currency, as if both were of equal value; and the balance to be paid would be the same as if only $17,000 in currency, had been paid on account.

The libellant would receive on account $17,000 in gold, which, at 40 per cent. premium, would give it in currency.....$23,800 00

It would then be entitled to recover, under this decree, a balance in addition—found by deducting $17,000 from the amount of the decree (viz.: $28,428$\frac{44}{100}$,) $11,428 44

Amounting to the full sum, in currency, of....$35,228 44

Whereas the libellant was supposed to have been originally awarded, interest being included, the sum of $28,428 44 in legal tenders.

The District Judge, in the opinion on which this decree is founded, says: "one of the insurance companies which

assented to the agreement having failed, its proportional share of the salvage reward has not been paid to the salvors. The amount underwritten by this company was $15,000. This, added to the $60,000 uninsured, makes $75,000,or 75–400 of the total amount agreed to be given, which still remains unpaid."

"The total amount of the compensation agreed to be given, stated in legal tenders, was $128,333. 75–400 of this is $24,062 25, for which, with interest at seven per cent. from the date of the commencement of this suit, a decree must be entered. I think the allowance of interest and the increased value of legal tenders a sufficient indemnity for the delay and expense of litigation to which the libellants have been subjected."

Opinion of Judge Hoffman, p. 29.

Whilst Courts do not encourage appeals from matters of discretion, in the case of *Post et al* v. *Jones, et al.*, Mr. Justice GRIER, delivering the opinion of this Court, said, "that where the law gives a party an appeal, he has a right to demand the conscientious judgment of the Appellate Court on every question arising in the cause. Hence, many cases are to be found where the Appellate Courts have either increased or diminished the allowance of salvage originally made, even where it did not violate any of the just principles which should regulate the subject."

19 *Howard*, 160.

It is respectfully submitted that the rules of law, and every principle which should regulate the awarding of salvage, have been violated in the decree rendered in this cause.

JOHN E. WARD,

of Counsel for Appellant.

ADDENDA.

U. S. DISTRICT COURT.

COAST WRECKING COMPANY,

vs.

THE STEAMSHIP "MORNING STAR," her tackle, &c.

Southern District of New York, ss.:

I, George F. Betts, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the annexed paper writing is a true copy of the original decision rendered March 26th, 1866, by the late Hon. Samuel R. Betts, the then Judge of the District Court of the United States for the Southern District of New York in the above entitled cause.

Dated New York, Sept. 18, 1869.

GEO. F. BETTS,
Clerk.

U. S. DISTRICT COURT,

Southern District of New York.

The Coast Wrecking Company,

vs.

The Steamship "Morning Star," &c., owners,

Claimants.

March 26, 1866.

Betts, J.—Early in the morning of July 31, 1863, the above ship, on a voyage from New Orleans to New York, freighted with a valuable cargo of merchandise, including also $60,000 in specie, in a misty and obscure state of the atmosphere, the wind being light and the sea smooth, grounded upon the eastern face of New Jersey coast, near Deal Beach. The ship, independent of her cargo, was valued at about $250,000.

The "Morning Star" was carried on the beach with so much force as to prevent her extrication, at the time, by her own means of navigation. Agents of the libellants in the vicinity of the accident were eye witnesses of the event, or were immediately cognizant of the fact, and went on board the vessel and observed her situation, and solicited there to be employed in their corporate character in furnishing her assistance and relief.

The libellants aver themselves to have been incorporated by the Legislature of the State of New York, and invested by their charter with authority to hire or own vessels manned and equipped, to be employed in towing, aiding, protecting and saving vessels and their cargoes wrecked or in distress, whenever such wrecks or distress occur, and to receive compensation or salvage for such services, in like manner as private persons, and entitled to like liens and remedies.

The location of the libellants' incorporation was in the city of New York, between 30 and 40 miles from the place of the wreck of the ship, and in familiar communication with all the cruising

localities of that vicinage. It appeared upon the trial of the cause, and was so treated by both parties, that the business of wrecking or salvage followed by the libellants, was conducted exclusively by vessels, equipments and materials supplied and paid for out of the corporate funds: and the agencies executing the work done, in no way participated personally in losses or gains springing out of the services rendered on the occasion of their employment. The officers and men of whatever rank and position, serving, shared no contingent compensation in recompense of their labor and employment, but received payment *in solido* out of the funds of the corporation as in cases of pure contracts of hiring; and the result would seem to present the scheme of action to be, that the legislative *entity* formulated by an incorporation acquires stockholders of the corporation the faculty of appropriating subscriptions and shares of stock, so as to become thereby empowered to receive compensation for salvage services in like manner as private owners, and entitled to the like liens and remedies, except only that the reward is received as fixed wages in the way of computed shares and valued distributions.

Subordinate Courts of Admiralty jurisdiction will be apt to await the declaration of such rules of decision by tribunals of ultimate authority before pronouncing such to be the established law of salvage recompense in respect to the distributive rate of reward to the owner's *property* used in effecting a salvage service. It can scarcely be assumed, as a presumption of law, that stock shares of a corporate body are imbued with faculties and emotions, moral or intellectual, of a higher order than the inert material, whose value they represent by positive statute, in a distribution of dividends.

The libellants claim an ample compensation for salvage services rendered in the cause, commensurate to the amount of property involved in the perils pending over the vessel at the time: the respondents and claimants insisting that the libellants agreed and undertook and were employed in the matter upon a previous understanding with the claimants, that the cost for the services agreed to be performed by them in relief of the

stranded vessel would be limited to 2,000 or 2,500 dollars. After suit was brought, a stipulation was exacted by the libellants, and executed by the claimants, in place of the arrest and detention of the vessel, in the sum of $20,000, and the answer avers that $15,000 actual payment of damages is demanded by the libellants.

The steamship "Morning Star," owned by the claimants, grounded on the New Jersey beach early in the morning of July 31, 1863; and an agent of libellants, knowing the fact, applied to the master of the steamer, in behalf of the libellants, that the latter should be employed in relieving the ship from her situation—representing the libellants to be incorporated, with the possession of ample capital and provision of men, officers, vessels, materials and fitments of all kinds, held constantly ready at the headquarters of the company, in the city of New York, to furnish relief to vessels in the condition of the "Morning Star," which would be brought to the place of her disaster in time to take her in charge, for removal from the beach at high tide in the afternoon of the same day. Evidence was also given for the claimants that similar applications of like character were made to the like effect by other parties, to the owners of the grounded ship, to get her off the beach.

At about noon the same day, Merritt, another agent of the libellants, called upon Hubbard, the secretary and treasurer of the company owning the ship, at their office, in the city of New York, and also solicited the same employment in behalf of the libellants—giving the strongest assurances of the entire competency and readiness of the libellants to furnish the relief required by the ship, promptly, and so as to have the helping vessels, crews, and all necessary aids and equipments at the place of the wreck the same afternoon, in time to begin the work with the falling tide, then to commence.

Mr. Hubbard went to some insurance offices in the city to inquire of the sufficiency of the libellants to perform the work—first enquiring of the agent of the libellants what would be the cost of sending down the relief vessels. The agent said he could not tell the cost; but the president of the libellants' company would inform witness what it would be. The interview with libellants' agent was at about noon. The witness went out to

make his inquiries, and went twice to the libellants' office before seeing the president, or officer having charge of the office of the libellants. He assured the witness that the libellants had every apparatus for getting the vessel off, and doing the work well and quickly; he said they would leave the city by two o'clock, P. M., and would be down to the place of the ship "Morning Star," by four o'clock the same afternoon. Witness thereupon delivered to Merritt a letter of instructions to the Capt. of the "Morning Star," informing him the libellants were employed to get the vessel off. Merritt and the chief officer of the libellants' corporation, both testify they have no recollection of stating to Hubbard the price or cost which would be charged the wreck for the services; but Mr. Hubbard swears to the fact directly, and the positive testimony of one witness to the transaction must outweigh, as proof in the cause, the non-recollection of witnesses for the libellants only alleging their want of any recollection of the fact.

There is an inherent probability in the circumstances attendant upon the subject matter that Mr. Hubbard's testimony is entitled to credit in the relation he gives of the interview with the agents of the libellants.

They, in all their treating for the employment of their instrumentalities on the part of the "Morning Star," descanted earnestly upon the special adaptation of the libellan s' equipments and preparation for that particular occasion of towing, which was also displayed in their charter as a prominent feature; the number and sufficiency of hawsers and other apparatus and appliances, officers and crews of their vessels, &c., &c. They, moreover, visited the "Morning Star," after she grounded; knew her position well, and the description and quantity of labor which would be required for her relief; the nature of the coast, the tides and currents running there, and also the place to which the wreck would probably be removed; and they were strenuous suitors for the employment. It would, in such a case, be most natural and apt that the owners of the wreck would inquire of the suitors for the job, what would be the expense charged for the undertaking; and equally probable that the

libellants would be not less prompt to furnish an answer to the inquiry; and it is to be remarked, that no evidence has been produced in Court, after a sharp litigation in the premises, demonstrating that $2,000 or 2,500 dollars was not an adequate compensation for the services actually rendered by the libellants.

In addition to these considerations, the claimants furnished gratuitously their entire ship, officers, crew and equipments, &c., to the libellants in aid of the wrecking operations performed during the whole period the work was in progress.

It is furthermore a circumstance of weight, evincing that the alleged salvors did not regard their services of a salvage nature purely, that they, on arrival at the beach with their vessels to commence their work upon the wreck, advised the master of the "Morning Star" to send by the Express Company to New York the $60,000 of specie, part of the cargo of the wreck, to avoid the danger of its loss, if remaining with the ship; which would be a very unusual proceeding if the libellants regarded their operations to be a *salvage* of the ship and cargo.

I am persuaded, accordingly, that the undertaking, in its inception, manifested upon the conduct and intercourse between the parties, was upon the understanding that the compensation for the services to be rendered was upon the basis of a *quantum meruit*, under a limitation that the reward was not expected to exceed $2,500.

It is quite competent for parties interested to agree upon a stipulated sum, as a salvage reward for salvage services. (Marvin on Wreck & Salvage, 128, § 119). The agreed compensation is binding upon the salvors, and remains salvage, although limited to an amount agreed and stipulated between the parties. When there is an agreement to perform labor upon a vessel in distress for a compensation to be paid at all events, whether the vessel be relieved thereby from the peril or not, such agreement displaces a claim for salvage purely. (The "Whitaker," Sprague's Decisions, Mass. Dist. Court, 282.) And a *quantum meruit* is recoverable for the services.

In that position of the arrangement, the libellants, had their

efforts to save the vessel been fruitless, would not have lost their labors and expenditures, but could have resorted to the equity of the proposition or offer made by them to the claimants to relieve the vessel on the terms stated on their part and accepted on the part of the claimants, or received the reasonable worth of the labor and disbursements made by them on the business; and the corresponding acts of the parties were in fair accord with such reasonable meaning.

The several parties met in this relation; the libellants had visited the stranded ship, made themselves acquainted with her exact condition by inspection, and, through their business calling and pursuit, fully understood the character and degree of the help she needed, and requested to be employed in performing the service. The claimants had asked what would be the cost of the work, and the libellants replied from 2,000 to 2,500 dollars; and upon that answer the claimants immediately placed the ship in the hands of the libellants' agent, who performed the job, without loss or accident, in a few hours' labor in the daytime, after he had reached the ship.

These contracting parties, wholly strangers to each other personally, as it seems, transacted the business treated about in the most direct and summary manner; very much, I apprehend, as if regarded between them to be a direct bargain conclusively closed by the few words interchanged between them at the time of the interview; no difference of relations between them being contemplated after the ship was so placed in charge of the libellants, until their services were finished; and I consider their rights towards each other are now precisely as they would have been had the libellants literally fulfilled their agreement by going to the wreck at the time stipulated, and performed what they represented they would do (and actually did two days afterwards),—fastened their towing apparatus to the stranded vessel and drawn her harmless off the beach where she lay grounded.

I consider, therefore (as appears by the proof), that the vessel was placed by the claimants in charge of the libellants, and was accepted by the latter on a bailment for labor to be performed by the latter, thus consummating the contract *in presenti*,

by mutual delivery and acceptance between the agents of the respective parties.

The libellants insist that the property, being then in a state of wreck, went into their possession in that condition, and was held by them under obligations of her owners, implied by law—that the libellants should be recompensed for its rescue and restoration conformably to the principles recognized and enforced in cases of salvage at sea. On the contrary, the claimants maintain that the libellants, together with others, were suitors for the same job, and that it was notorious at the place of disaster that the matter of furnishing relief to the steamer aground was subject of pursuit and solicitation between different applicants, and that the business had been allotted to the libellants.

I am not called upon to declare that negotiation on the subject between the agents of the parties resulted in a formal contract, which was capable, in any result, to carry it into execution, not proceeding from the fault of an obligor, to be pleaded and enforced as absolute against the other; nor that, in case the fulfilment of the arrangement on either side had been prevented by inevitable accident to either party, the Court might not administer the engagement as equitably one of a *quantum meruit* character, and afford relief to the libellants in proportion to the benefit bestowed by their labors and judicious conduct in the undertaking, though ultimately fruitless in its results.

This would be quite compatible with the arrangement preliminarily adopted between the parties, considering it not regarded by either as absolutely of a salvage character. Then the interpretation of the understanding of the proposition made by the libellants' agents to the agents of the claimants, and accepted by the latter, to pay $2,000 expenses for services to be rendered, and up to $2,500, if so much was earned, would enable the Court to secure each one a reasonable remuneration out of the enterprise, and take from it the hazard of a total loss of labor and expenditures expended, because of a failure of complete success in the whole undertaking.

The conduct of the libellants during the transaction indicates they did not regard their standing therein to be that of technical salvors; they accepted the injured steamer, her master, officers, crew, equipments, apparatus, engines, &c., &c., as gratuitously contributed to the common services; they assented to —indeed advised—that the claimants, before the forces provided for relief of the stranded ship commenced operations upon her, should take from her the $60,000, part of her lading on board, and send it from the place of the wreck by the Express Company to New York, which proceeding very little comported with a consciousness of holding the right of an inchoate salvor upon that value of cargo on the ship at the time of her wreck. So also did the fact, that the relieving vessel, the moment she had drawn the "Morning Star" from the sand bank upon which she had struck and was detained, and her fires could be lighted and steam raised, delivered her up to her captain and crew, by whom she was navigated to her own berth at the New York docks.

The counsel for the libellants urges most strenuously the great value and cost of the salvor vessel and her equipments, and appliances employed by them on the services rendered on this occasion in question, as a particular entering into the augmentation of the recompense to which the libellants are entitled under the rules of evidence governing allowances to salvors by admiralty tribunals in that class of litigations; and that principle has been invoked as pervading and largely influencing in favor of suitors throughout the administration of salvage laws in European and American jurisprudence: and it is specially urged in this instance that those doctrines should be recognized and enforced emphatically, in encouragement of the modern practice, followed by these libellants, of putting vessels and crews of large and expensive completeness and fitness for the special business of saving vessels and cargoes, by the open countenance, through a distinctive grant of extra compensation to these libellants, because of the remarkable completeness of their apparatus and ship's crew, and their energy and faithful conduct in perfecting the salvage of the "Morning Star;" ask-

ing to have imputed and appropriated to this incorporation, by the way of enhanced rewards imposed upon the wrecked, all moral and physical merits and personal gallantry and hazard recognized in the books as justifiable causes for inflamed compensation to individual salvors, for services of high value and personal merit and hazard on special exigencies.

But I perceive no legal reason or justification for applying the rule referred to—however sanctioned in respect to individual salvors in cases of personal exposure of life or property to affect ships or goods of strangers—to corporate bodies having alone a figurative vitality imparted by positive law, and giving aid only on fixed wages, and however much of commendable worth and heroism may have been displayed in fulfilling their stated services, the actors therein on fixed wages, however faithful to their duties, would not be entitled, in distribution out of the gratuities asked for from the judgment of the Court, to one tittle of reward personally; but the bounty must be exclusively allotted to the *corporators* (typified by positive law to be in the transaction, and imbued with the sentiments and emotions of the liveliest humanity), actual owner and actors, but in reality actuated by no higher or other merit in acts of a salvage character than the fire insurer is on paying up his forfeited policy of insurance.

In my opinion, had the engagement between the parties in this case been, as alleged in the libel, an open contract for salvage services, the measure of compensation to be distributed to the libellants would be none other than the proportion legally pertaining to the *property* put in hazard by the service, and no fiction of law can be invoked vivifying the symbolical corporation into an assemblage of vital salvors, exercising the emotions and faculties of living men consummating a meritorious salvage achievement and thus becoming individually entitled to a fitting reward therefor.

My conclusion upon the whole case is, that the employment of the vessel, her crew and apparatus, was in the first instance obtained by the importunity of the libellants for their own pecuniary interest, and with the same knowledge in all particulars

of the subject of negotiation as was possessed by the claimants; that the services proposed to be performed by the libellants were for a consideration limited to $2,500; and if upon equitable considerations or under subsequent alterations of facts in relation to the subject of the bargain, great changes had occurred in the nature of the services to be performed, rendering it onerous and inequitable for the claimants to enforce such limitation of the sum to be paid to the libellants upon the offered agreement with the claimants as it was accepted by them, yet there is no proof given in the cause, showing that any such alteration did afterwards occur, or that the libellants are entitled to more for their labors and hazards than the sum upon which they were offered and undertaken.—

Wherefore, a decree must be entered for the libellants for $2,500, with interest from August 3d, 1863, and costs of suit.

The interest and costs of suit might have been barred by the claimants had they tendered satisfaction of the bargain at the price upon which it was undertaken by the libellants.

For Libellants, Mr. C. A. Hand and ex-Judge Marvin.
For Claimants, Messrs. Benedict, Tracy and Benedict.

U. S. CIRCUIT COURT,

Southern District of New York.

The Coast Wrecking Company,

vs.

The St. Ship "Morning Star."

Nelson, C. J.—The libel was filed in this case to recover salvage for saving the steamship "Morning Star," which ran

aground on Deal Beach shore, New Jersey, about forty miles from this city, July 31, 1863. The vessel is valued at $150,000, and the cargo at $200,000. The libellants are an incorporation, under the laws of New York, with authority to own vessels, to be employed in "towing, aiding, protecting and saving vessels and cargoes wrecked or in distress, wherever such wrecks occur on the high seas, or in the various arms of the seas and rivers running to the same," &c.

The act of incorporation also allows the Company, among other things "to take all compensation, towages, and salvages, which are customary and usual, and which by law and usage enure to private persons," &c.

This company was employed by the owners of the "Morning Star" to go down from the city and relieve her from her perilous situation on the beach, and which was done accordingly, with expedition and skill, by the use of appliances kept on hand by the company. The vessel had gone on the beach in a fog, and, although there was a considerable swell upon the sea, the wind was light, and very little difficulty was encountered in towing her from the sand bar on which she grounded, and setting her afloat. She sustained no injury.

The Court below allowed as compensation to the company for the service rendered, $2,500 and interest. There is evidence in the case that the owners, when applied to by the company to perform the service, had inquired as to the expense; and although no definite answer was given, $2,000 or $2,500 was suggested as the probable amount.

There is no proof in the case but that this would be a reasonable compensation upon the rate as for work and labor; that is, there is no evidence to the contrary. As a salvage service, I think the sum allowed was inadequate upon the principles governing the rate of compensation in that class of cases.

The learned Judge below appears to have been strongly inclined against regarding this company as a salvor, within the reasons and principles which govern the admiralty in awarding compensation for admitted salvage services. All the persons representing the company, engaged in the service in question,

receive no part of the salvage money. They are employed at a permanent salary, or, if temporarily, for the given service, at day's wages. All considerations, therefore, of personal sacrifice or gallantry, in encountering imminent perils in rescuing vessels in distress, are necessarily excluded in fixing the rate of compensation. If allowed by the Court, all beyond the salaries or wages enure to the benefit of the company. We agree that a liberal compensation should be allowed for the use of the apparatus furnished, which is ample and well adapted to the purposes intended by the present company; and for the skill with which it is handled in the service performed: but in the sense of the law governing salvage compensation, we have great difficulty in awarding it to the libellants. As at present advised, we must deny it; and, as for aught that appears, the compensation allowed by the Court was reasonable for the work and labor, and materials used, the decree below is affirmed.

JUDGE MARVIN & MR. HAND,
for Liblts. & Applts.
Messrs. BENEDICT & BENEDICT,
for Appellees.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THOMAS F. MARSHALL and others,

vs.

The British Ship "STRATTON AUDLEY," her Tackle, &c., and Cargo.

I, George F. Betts, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify

that the annexed paper writing is a true copy of the original decision rendered by the Hon. Samuel Blatchford, Judge of said Court, on the 27th day of May, A. D., 1869, in the above entitled cause of action.

Dated, New York, September 4, 1869.

GEORGE F. BETTS,
Clerk.

U. S. DISTRICT COURT,

SOUTHERN DISTRICT NEW YORK.

THOMAS F. MARSHALL and others,

vs.

The British Ship "STRATTON AUDLEY," her Tackle, &c. and Cargo.

BLATCHFORD, J.—This is a libel filed by Thomas F. Marshall, Master of the steamer "Yankee," and David A. Walcott, Master of the steamer "Rescue," and the Atlantic Submarine Wrecking Company, a corporation created by the State of New York and authorized to engage in the business of wrecking and assisting vessels in danger and distress, and who were the owners of the said steamers. The libel is filed by the libellants for themselves and the crews of the said steamers, and claims the sum of $25,000 as a reasonable compensation by way of salvage or otherwise, for the services of the libellants, and of the said crews, in removing the ship "Stratton Audley," a British vessel, and her cargo from off the Romer Shoal, near the entrance to the lower bay of the harbor of New York, where she was aground on the 23rd of March, 1869.

The answer gives substantially a correct version of the facts of the case, as they appear in evidence. The ship was bound

from Calcutta to New York. She took a pilot off Barnegat light, about half past six o'clock, in the evening of March 22nd. At a quarter before eleven o'clock at night, while running for the bar, at the entrance of the lower bay, she encountered a snow squall which obscured the coast lights. Her port anchor was then let go, but the chain parted. Her starboard anchor was then dropped. She dragged for some distance with this until she brought up in 27 feet of water. She drew 17¾ feet forward and 19¼ feet aft. The tide—which was very high, being driven in by an easterly wind, so that low water was as high as ordinary high water—fell, while the vessel lay in this position, so that there came to be but 21 feet of water under her aft, and, as there was considerable sea on, she struck bottom occasionally near her stern, and when she struck, thumped heavily. About six o'clock in the morning the "Yankee" came within hail of the ship and was asked by her master what the charge would be for towing the vessel off. Marshall, the master of the "Yankee," asked, in reply, how much water the ship drew. The answer from the ship was, 20 feet. Marshall asked how much water there was alongside the ship. The answer was, about twenty one feet. Marshall asked if she was not striking. The reply was, once in a while. Marshall then said he would tow the ship off for $1,000. The master of the ship said that was too much, and offered $500. The "Yankee" then drifted out of hailing distance. She soon came up again to the ship. The master of the ship then asked Marshall "How much did you say?" Marshall replied, "£2,000." The master said, "I understood you, dollars." "No," said Marshall, "I said pounds." It was then agreed that the "Yankee" should render her assistance, and that the amount of compensation should be left to arbitration. The "Yankee" then got a hawser to the ship, about 6½ o'clock, A. M. The "Rescue" soon came up, and aided the "Yankee" in pulling, there being a hawser from the stern of the "Rescue" to the bow of the "Yankee," and another hawser from the stern of the "Yankee" to the ship. The latter hawser which belonged to the "Yankee" and was a new one, eight inches in

circumference, parted, and was put in place again with another hawser, which belonged to the ship. The two were then pulled with, until the ship's hawser broke. The pulling with the other hawser was continued, the ship being moved as the sea lifted her, until that hawser parted again. The hawser from the "Rescue" to the "Yankee" parted two or three times. The result was, that, by use of hawsers, and hawsers alone, and the power of the two tugs, the ship was hauled off into deep water about noon, a space of six hours from the time the "Yankee" first reached her. She was towed by the tugs to New York, arriving there about 4 P. M. She was an iron vessel, and so far as appears was not injured or strained. When the "Yankee" reached the ship it was the beginning of the ebb tide, and the wind had shifted from the eastward and came out light from the south and west, but the sea did not abate. It was low water about 10 A. M., and about that time the wind got around to the west or north-west. The answer avers a willingness and readiness on the part of the claimants at all times to submit to arbitration the question of the amount to be allowed to the libellants for the service, as one of towage, but alleges that the libellants have at all times insisted on submitting their claim to arbitration as one of salvage. The claim is pressed upon the Court by the libellants as one of salvage. The value of the ship and her cargo was $250,000. The value of the two steamers at the time was about $80,000, and the value of the wrecking apparatus and material aboard of them was about $50,000 more.

I think, on the evidence, that the peril to the ship, at and after the time the "Yankee" reached her, has been very much exaggerated by the libellants. So, too, the danger to the steamers has been inordinately magnified in order to enhance the value of the services. But substantial service was rendered to the ship by the two steamers, and for that service a liberal, but at the same time a reasonable compensation must be awarded. The ship was undoubtedly in a condition to be the subject of a salvage service; but on the principles settled by the Circuit Court for this District in the case of *The Coast Wrecking Co.* vs.

The Morning Star, (June, 1868) and applied by this Court in the case of *The New York Submarine Co.* vs. *the Schr. J. F. Farlan*, (April, 1869) no salvage compensation for the services rendered in this case can be awarded to any of the libellants. The masters and crews of the steamers were hired on wages by the corporation which owned the steamers and all the apparatus and material aboard of them. They received these wages steadily, whether the steamers were employed or not. Their compensation for the services they rendered to this ship, and for the time occupied in rendering those services, was not at all dependent upon the success of those services. In rendering these services they did not render them directly to the ship, but they rendered them incidentally in the discharge of, and as a part of their duty to their employers. When they were hired they were given to understand by the corporation that they should receive only their wages, and that they should have no share otherwise in any earnings of the vessels of the corporation; and none of them will have any share in anything that may be awarded to the libellants in this case. The masters and crews of the steamers must, therefore, be wholly left out of the case. The corporation cannot claim, as assignee, in advance of what might otherwise be the claims of its hired servants for salvage; and those servants, having cut themselves off by their contract with the corporation, from setting up any claim for salvage in this case, such claim never had any existence so as to be capable of assignment, after the fact.

Nor can the Corporation itself be a salvor. It cannot hire persons on wages, and claim salvage for services rendered by those persons. If such a principle were to be admitted, it would have to be extended to individuals, and yet it was never heard that one person could hire another on wages to perform a salvage service to a vessel in distress, and to have no share otherwise in the compensation therefor, and that after such service had been rendered by the latter to the former, who had taken no personal part in it, could claim salvage compensation therefor, as such. Yet that is precisely the claim which the libellant Corporation in this case is urging, when it asks to be paid as if it

had been an individual salvor. The main element which the law recognizes and requires as an element in salvage service is wholly wanting in the case of a Corporation. That element is, the impulse and stimulus which spurs the individual salvor to manifest boldness and heroism, and incur risk and peril by the expectation of the large compensation which the law awards in case of success. That element was wholly wanting in this case. The ship and her cargo, as a consideration for their liability to pay a salvage compensation, were entitled to the exercise of all the energies which individual salvors could put forth, impelled by all the hopes of salvage reward which could operate to stimulate those energies. There were no such hopes of salvage reward in this case on the part of the officers and crew of the steamers; and it is at least doubtful—in view of the fact that the "Yankee" failed, through timidity, to reach the ship until at the third attempt to do so, while a pilot boat and her yawl seemed to have no difficulty in navigating safely in a no less boisterous sea—whether the same energies were put forth by those aboard of the "Yankee" to reach the ship promptly, that would have been manifested if they had been working for themselves, and not merely for their employers. The master of the "Yankee" says that he turned back, on his first attempt to reach the ship, because he considered the risk too great, and that he abandoned the second attempt because he would not run the risk until daylight. It is very questionable whether wrecking Corporations for salvage business, with their employees placed upon the footing occupied by those of this Corporation, are, on the whole, of advantage to commerce. There is, on the one hand, the benefit of associated capital of large amount, with well fitted appliances for the business. But this has the effect to drive individual salvors out of the business, and the daring, and courage, and insensibility to danger, nerved by the propect of large reward, which are manifested constantly by individual salvors are replaced by the poor substitute of hired labor, which has nothing to gain by taking risks, and is, therefore, likely to fail to use promptly, at critical moments, the ample means placed at its disposal.

The Corporation is entitled to a proper compensation for the use of its two steamers, and of such of the appliances on board of them as were used in the service rendered to this ship. The case must be viewed as one of contract for work and labor, without reference to the value of the ship and her cargo, as an element in the measure of compensation. Marshall, the master of the "Yankee," placed it in that position by what passed between him and the master of the ship. It is manifest that the latter, by regarding $1,000 as a large charge, and offering $500, had no idea that he was subjecting his vessel and cargo to a salvage charge. It is entirely clear, on the evidence, that if he had been told, that if he allowed himself to be towed off from where he was by the "Yankee," he would in the end be obliged to pay her owners a compensation of $25,000 for the service, he would have assumed the risk of remaining there, the wind having already changed to a favorable quarter, until a vessel, more moderate in her demands, should come to his aid. The master of the ship says that he heard no mention of any price by Marshall except $1,000, and that he heard nothing about £2,000, or about any pounds.

The hazard to the steamers and the property on board of them, whatever it was, is to be taken into view as making the service worth more than if there had been no hazard to them. But the idea that a proportion of the cost of maintaining the steamers and property for occasional service, and of the current expenses of the Corporation while such steamers and property are not employed in the service of this ship, is to be paid by this ship, is wholly inadmissible. In this case the Corporation would have had a claim for compensation for the time and services of the steamers in endeavoring to pull the vessel off, even if they had failed. Their compensation must of course be greater because of their success.

I wholly reject the testimony of the so-called expert witnesses on both sides, who gave evidence as to their opinion of the value in money of the services rendered. They proceed on grounds which are unsound and not in consonance with the views which, as above stated, must govern this case.

On the whole evidence, I think $1,500 is ample compensation in this case; and, as the claimants, before suit was brought, offered to pay $2,000 by way of compromise, I allow no costs to the libellants.

E. W. STOUGHTON and
J. E. PARSONS,
For the Libellants.

E. C. BENEDICT and
T SCUDDER,
For the Claimants.

In the Supreme Court.

MATERIALS, &c., OF MONITOR CAMANCHE: DONAHUE, RYAN & SECOR, *Claimants (Appellants:)* *vs.* COAST WRECKING COMPANY OF NEW YORK, *(Libellants.)*	*In Admiralty Brief and Points of Respondent.*

Appeal from the Circuit Court of the United States, Tenth Circuit, in and for the District of California.

This appeal is from a decree of the Circuit Court, for the District of California, affirming a decree of the District Court, awarding to the libellants, the Coast Wrecking Co., $28,428 44 (being the principal, $24,062 25, with $4,366 19 interest, awarded in the District Court), with interest at 7 per cent. from April 10, 1867; and, also, a summary judgment against Donahue et. al., sureties in the bond on appeal from the District Court, in $17,000 United States gold coin, being the amount specified in said bond, with costs.

The bond on the appeal to this Court is in $22,000 United States coin, for the prosecution of the appeal and all damages and costs. Trans. folio 298.

The libellants are the "Coast Wrecking Co. of New York," a company chartered by the State of New York, with power, as expressed in the charter, to engage in

a general towing and salvage business; to maintain all necessary vessels and apparatus; to make charges for salvage, and enforce the same, in the same manner as private parties. Trans. folio 276 to 278.

Its organization of men, vessels, apparatus, machinery for purposes of salvage on any scale, or under any circumstances, is of great power, and the utmost efficiency, as is amply shown by the present case, not less than the statements of the witnesses.

It maintains, constantly, in readiness for emergencies, vessels and apparatus, specially adapted to the service.

It also keeps up a staff of officers and men of established experience and skill as wreckers, divers, engineers, &c., &c. Trans. 174, 175, 176. This standing body is reinforced, whenever necessary, as in this case. Trans. 147.

The libel is for the salvage in the harbor of San Francisco, of the entire body of materials, machinery, engines, construction tools, &c., of the iron-clad Monitor "Camanche," under circumstances of very unusual, if not unexampled merit.

On Nov. 16th, 1863, about 3 A. M., in the midst of a violent storm, the ship "Aquila," then but a few days in port, sunk at her moorings in deep water, alongside her wharf, in San Francisco. She had just hauled in there to discharge her cargo, consisting of the materials and armament of the Monitor "Camanche," which was to be constructed under contract with the Government, by Messrs. Donahue, Ryan & Secor, the claimants in this case.

She had been anxiously expected with her important cargo. Her foundering in a most exposed and difficult part of the bay made the loss of the Monitor highly probable, if not certain. The public mind, excited by the civil war then raging, and by fears of attacks by hostile cruisers on a harbor and city inadequately defended, was shocked by the shipwreck of the only sure means of protection

provided by the Government for both: and this feeling extended itself throughout the country.

Measures were promptly taken to save, if possible, the vessel and cargo. Messrs. Donahue & Ryan, two of the contractors (and claimants), then in San Francisco, of which they were old residents, made, within a day or two after the "Aquila" sunk, a written abandonment of ship and cargo, the latter being but partially insured, to the agent of the underwriters at San Francisco. Trans. folios 247, 250.

The agent did not accept, but took vigorous measures to save the property. The Government Superintendent for the building of the Monitor, Mr. Tornbohm, was early on the ground and was active. Trans. folio 225, etc.

The best mechanics of the city were contriving measures. A dry dock was thought of, and plans were drafted. The first attempt actually made was by pumping out the ship. This was after full consultation. It proved a failure. The next attempt was to lift the ship by chains, under her bottom. Different modes of getting these under were tried by divers, by blowing a hole underneath, all in vain. This attempt, like the other, ~~etc.~~, was abandoned.

These efforts were continued several weeks, at a cost to the underwriters of $38,000, gold (Trans. folio 247), but were finally given up. Mr. Ryan, one of the contractors and claimants, bore a leading part in these operations; had charge of the pumping process, and received $1,000 pay for his services. Trans. 226, 246.

In this juncture, all efforts at San Francisco having proved abortive, the Coast Wrecking Co. agreed, at New York, with the underwriters, to undertake the salvage of the materials of the Monitor; and promptly dispatched to San Francisco a party of men—divers and wreckers—

specially selected from New York, Boston and Providence, and fully provided with suitable apparatus and machinery; the whole under the command of Capt. Merritt, the company's general superintendent, a man of twenty years' experience, and of peculiar skill and eminence in his calling. Trans. 113, 114, 131, 146, 147.

The expedition left New York, Dec. 24, 1863; and arrived in San Francisco Jan. 17, 1864. Capt. Merritt, on Jan. 23, received possession of the wreck, and on Jan. 25, after examination and study as to the best plan, he commenced operations. Trans. 114, 147, 151.

The condition of matters at that time was full of difficulties. The winter had just commenced, and there was every reason to expect cold and stormy weather. The ship, as she lay, was exposed to the S. E. gales of the season—one of which had sunk her—with the full rake of the bay for thirty miles and to its currents. Trans. 115. She lay ten feet from the wharf, with a bad list to starboard (off-shore) of 45 degrees; pitched by the head at 30 to 32 degrees; her forward part, for one-third of her length, projected beyond the end of the wharf, and the bow exposed to the force of the tides and currents. Her bow was sunk in 48 to 50 feet water; her stern in about 19 feet. Trans. 115, 148. At low water about one-sixteenth of her deck was out of water; at high water she was submerged, except a space on one side, close astern. Trans. 148, 139. In effect she was at the bottom of the bay, and at such angles of inclination fore and aft, and from side to side, as to make it, independent of the depth of water and the darkness, difficult to stand on her decks, and almost impossible to work at getting out her cargo. Besides, she rested on a rocky bottom, shelving off-shore; making her liable, if her fasts should part at any time, to slip off into deeper water. Trans 29, 30.

Besides the difficulties of the ship's position, the cargo was very perplexing in its character and in its stowage.

The materials of the Monitor comprised a great number of iron pieces, from 26 tons to 100 pounds in weight.

Trans. 229, 155. The frame was of angle-iron, long crooked pieces, very difficult to handle. Floor "timbers," also of iron, were of irregular shape, and some very heavy and very long. Trans. 118, 119, 153, 154, 228. There were two main engines for propelling the Monitor, and eight smaller engines. Trans. 229. The guns weighed 22 tons each, and there was a number of shot and shell. The guns, as well as the other heavy pieces—as the pilot-house, 26 tons—were liable, in the progress of loosening and getting out the cargo, to break away and do great damage. There were also a multitude of construction tools, machinery for a machine-shop, and small pieces, bolts, rivets, etc., by thousands. Trans. 119, 229. The weight of the whole was 1,400 tons. Trans. 229.

By reason of the very unusual nature, construction, value and weight of the cargo, and to keep it from shifting, extraordinary means and care were used in the stowage of it. It was "stowed down solid," "firmly fixed in the hold," shored by staunchions or joists, one end resting under the deck-beams, and the other resting on the cargo or the flooring over the cargo, in such angles and positions as required, and some of them tied with braces; the whole thoroughly wedged in. Trans. 50, 165, 140, 257. The stowage was such, as in the opinion of Mr. Ryan, one of the claimants, to make it impossible to remove the cargo with divers. Trans. 173.

Such was the nature of the materials, machinery, parts of the Monitor, &c., as to peculiarity of construction, number of pieces, impossibility of replacing them in San Francisco (Trans. 238, 239), that unless there was a salvage substantially of the whole, the undertaking was a failure. Such, also, were the terms of the contract between the Coast Wrecking Co. and the underwriters. Trans. 285 and see 289. Besides other stringent provisions as to time. Trans. 183, 184.

The difficulties of the enterprise and the probabilities of failure were such that before commencing Capt. Merritt

was discouraged, and desired that the contractors (the claimants) should object so that he might decline the job. Trans. 252.

They did not object; and after full examination the plan adopted by the salvors and carried out was to get out the cargo by divers as far as necessary and then to raise the ship, lay her on the flats and hoist out the remaining cargo.

The first part of the work, getting out the cargo by divers, was commenced Jan. 28, 1864, and unremitting labor from early in the morning until late at night, except two and a half days stormy and Sundays, it was completed about April 20, 1864, or in less than three months.

The raising of the ship was then undertaken. The attempt was first made to get chains under her. This failed, as she rested forward so heavily on the rock that the divers after working two days with picks, &c., could not get the chains under her. Trans. 120, 157. Another plan was tried and succeeded—that of lifting her with chains fastened to the deck beams and other parts of the ship, and hove through pontoons, with levers worked by powerful hydraulic machines, until the bow was raised from the bottom, so that chains could be introduced under her whole length. The chains were worked in the same way through the pontoons. About May 20, after a month's incessant work, day and night, Sundays included, (Trans. 132, 159), the ship was raised and floated upon the flats.

Steps were then taken for pumping her out. By means of a large hole made in the mud under her, the divers stopped the leaks; the ship was pumped out by steam, the mud removed, and the remaining cargo hoisted out. Trans. 160, 161. Capt. Merritt, with some of his men returned to New York about middle of June, 1864 (Trans. 37), and the last of the materials were landed July 3. Trans. 237. The duration of the salvage service from the time of leaving New York until its completion was about

six and one-half months; or, until the return to New York over seven months.

DANGER.

The danger from which the property was rescued was as imminent as possible.

The ship as she lay before operations commenced was worthless. Trans. 235, 251.

The condition of the cargo was but little if any better; under all the circumstances detailed, *ante* pp. 4, 5. Capt. Merritt almost despaired of success, and hoped the contractors would object to his going on. Other observers had serious doubts. Trans. 227. Every thing turned on the weather's being good—a gross improbability in the winter—and also upon superior and unusual skill and management in adopting and carrying out the very best plan. Trans. 208, 216, 242. Had any other plan been adopted, as that of attempting to raise her, any delay or failure would have been the destruction of the cargo. Trans 166.

VALUE.

The value of the property in money, was, according to the sum in the contract between the underwriters and the libellants, $400,000. Trans. 286. This was according to the value stated in the policies. Trans. 250.

This was exclusive of freight to San Francisco, or increased value there. Measured by the prices contracted to be paid by government, $640,000, it was about $440,000 after deducting for expenses of construction, for small amount of property saved before libellants commenced work, and for damage to property saved, say $200,000.

The value to the Government of the "iron-clad," which was to be the sole defence of San Francisco and the Pacific

coast, during a great civil war raging, with all its possible eventualities at home and abroad, was simply inestimable.

RISK.

The risk of life and limb during the salvage services, at least until after the ship had been floated upon the flats, was great and constant. The divers were particularly exposed. Not only were they obliged to work in profound darkness, but the inclination of the deck both ways, and the mud which rendered it slippery, made it impossible for them to walk, and compelled them to crawl by a line on the weather (or upper) side of the ship. And yet they had to follow up every piece to the hatchway. Trans. 208. To find and hook on the pieces to be hoisted out, they had to grope their way in utter darkness, and feel with their hands all over each piece. Trans. 203, 204.

This part of the operations was peculiarly dangerous. With the utmost care in breaking away the timbers which formed the stowage of the cargo, it was almost impossible to prevent the heavy pieces on the upper side of the ship from fetching away. Trans. 214. One of the large guns weighing 22 tons, fetched away in this manner. Trans. 183. One of the long crooked iron ribs coming away cut off a finger of a most experienced diver who had just hooked it on. He dived no more. Trans. 211. Many of the pieces had sharp edges, so that if one of them had struck a diver in a vital part it must have killed him. Trans. 213.

As the cargo was broken out, the dunnage and lumber in the stowage, and also the pine timber in the cargo would come suddenly up, fouling the diver's life-lines. Trans. 212. One first-class diver, after making two dives, refused to make any more. Trans. 142. This seems to be the case mentioned by the captain of the Aquila. Trans. 56.

The wreckers also incurred peril. While the cargo was being hoisted out, before commencing to raise the ship, a schooner dragged into the "Aquila," over her deck, in a S. E. gale. To prevent her sinking on the ship's deck, and thus ruining the enterprize, Capt. Merritt and his men boarded the schooner, at the risk of their lives, and cut her free. Trans. 155, 156. Afterwards, while they were lifting the ship with chains, a barge in tow of a steamer collided with the ship, and broke out the upper deck-beams. Trans. 160.

In the judgment of the chief witnesses on both sides, the service was pre-eminently a dangerous one. Trans. 55, 211 to 214, 229, 234, 235, 236, 241, 243, 245.

The pay of the divers was high, in proportion to the nature of their service. Those who went out from New York had $13 a day from the time they left New York until they returned there, and had all their expenses paid, including doctors' bills. Trans. 176, 177. A diver employed in San Francisco had $10 a day, in gold, while at work. A day's work for a diver was three hours under water. They were able to stay down from fifteen minutes to three hours. Trans. 216.

In case of accident to a man in the employ of libellants, it is their practice not only to pay all doctor's bills, but to provide for him, and, if death ensues, for his family, by aiding in money, and by placing him or his family in a position to earn a livelihood. Trans. 178, 179.

DIFFICULTY.

The difficulty of the operations was unexampled. This is obvious from the circumstances disclosed; and it is the express testimony of the witnesses, including the experts best qualified to speak. Capt. Merritt says of the difficulty of removing the cargo: "It was very difficult, in

one sense ; I consider it was much more difficult than any other cargo that was ever taken out of a ship." Trans. 165. "Cargo was more difficult to get out than any I have ever seen," says his second in command, Poole. Trans. 127. Jenkins, a diver of unusual experience and general intelligence, who had left the libellants' employ, declares it "the most difficult job he ever met." Trans. 219. To the same effect, Brewer, the Captain of the Aquila, witness for claimants, (Trans. 55.) Lougee, a diver, (241, 245.) Capt. Fletcher, the agent of underwriters, (252, 274.) Mr. Ryan, one of the claimants, (173.)

The money-cost to the libellants of the service, including the loss on apparatus, machinery, &c., rendered useless, was quite large. It was about $29,000 gold, and $20,000 currency. Trans. 180. Stating gold, in currency, at the then current rates, this was $63,500 currency ; besides Capt. Merritt's primage, still due ; which, at the rate allowed his assistant Poole, comparing their salaries, would have been at least $1,500. Trans. 177.

The libellants also risked the business of the entire Winter at New York, by sending off their best men to the Pacific Coast, upon the salvage of the Aquila. Their responsibility, in case of failure was, besides, a very unusual one before the country. The loss of repute, as a salvage company, must have been a serious injury.

SKILL.

The skill shown was of the highest description. Nothing else could have achieved success. The plan adopted was not merely the best, but the only one that could have succeeded ; and it was carried out with the utmost skill, care and energy. Trans. 227, 228 ; 234 ; 241, 242 ; 274 ; 54.

TIME and LABOR.

Such were the inherent difficulties of the service that nothwithstanding the skill and energy displayed, aided by the best apparatus and machinery it occupied between five and six months of constant labor, during four months and upwards, daily, except Sundays, until late at night; and during one month, day and night, including Sundays. The party which went out from New York comprised 13 men; and from 5 to 15 men were employed in San Francisco; having as many at work as could be useful. Trans. 222.

This consumption of time was unavoidable. One mishap lost six days. Trans. 159, 160.

Getting out, slinging, hooking on, and hoisting out were each and all very slow operations. Trans. 203, 204; 201; 235. To sling a single large piece sometimes took 3 or 4 hours. Trans. 215. By reason of the tide, the divers could be on deck only at slack water. Trans. 209.

POINTS FOR ARGUMENT.

I.

The service, in this case, was eminently a salvage service.

It was voluntary service rendered by the libellants in the saving of cargo, in peril, on board of a wrecked ship.

1. This is substantially admitted by the answer of claimants. Trans. 81, 82, 84. Conceding the services to have been meritorious (Trans. 81), the only issue made by the claimants is—rather by implication—as to the extent of the merit and the amount due. Trans. 85.

II.

This case presents, in a very high degree, all the ingredients of a salvage service. These are—and are in the order of merit—as follows: 1. The danger from which the property was rescued. 2. The value of the property. 3. The risk incurred in the salvage. 4. The value of the property employed in the service, and the risk to it. 5. The skill and knowledge shown in rendering the services. 6. The time and labor expended.

The Traveler, 3 Hagg., 371.
The London Merchant, ib., 395.
The Fusilier, Browning & Lush, 350; on app. in P. C. Regard is to be had: 1. To the value of the services with reference to the amount of property rescued; and 2. To the risk of life or property in rescuing it: and not in the inverse order.

1. The danger from which the property was rescued.

(*a*) It was extreme, as the facts in proof show. Ante, p. 7.

The season of the year—winter having just set in, with a violent gale, the same in which the Aquila was wrecked—made stormy weather almost certain, with the usual S. E. gales. The position of the ship exposed her greatly to these, and the risk of going to pieces, to the ruin of the cargo.

(*b*) This risk deliberately assumed, is a larger element in the compensation than even the toil and expense incured.

The Westminster, 1 W. Rob., 234.
The Gilpin, Olcott, 88.
Conkling, Adm., 290–1.

(*c*) The only hope of saving the property was in the expedition fitted out by the libellants. All other means had been exhausted; all farther efforts by any others had been abandoned.

2. The value of the property saved.

(*a*) In money, this

See ~~*infra*, Point~~.

But it was far gr
for which the car
tion of an ironcl
of San Francisco and the Pacific coast.

(*b*) The public policy, which is the controlling element of the law of salvage, as will be more fully discussed presently, requires that the highest compensation should be awarded for salvage services to a King's ship.

The Britannia, 3 Hagg, 154.
Compare:—Marquess of Huntley, 3 Hagg. 246–7–8, 248.
Ardincape, 3 Hagg, 153.

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(*a*) It was extreme, as the facts in proof show. Ante, p. 7.

The season of the year—winter having just set in, with a violent gale, the same in which the Aquila was wrecked—made stormy weather almost certain, with the usual S. E. gales. The position of the ship exposed her greatly to these, and the risk of going to pieces, to the ruin of the cargo.

(*b*) This risk deliberately assumed, is a larger element in the compensation than even the toil and expense incured.

The Westminster, 1 W. Rob., 234.
The Gilpin, Olcott, 88.
Conkling, Adm., 290–1.

(*c*) The only hope of saving the property was in the expedition fitted out by the libellants. All other means had been exhausted; all farther efforts by any others had been abandoned.

2. The value of the property saved.

(*a*) In money, this was very great.

See ~~*infra*, Point~~. *supra p. 7.*

But it was far greater, if we consider the purpose for which the cargo was designed—for the construction of an ironclad Monitor, the only sure defence of San Francisco and the Pacific coast.

(*b*) The public policy, which is the controlling element of the law of salvage, as will be more fully discussed presently, requires that the highest compensation should be awarded for salvage services to a King's ship.

The Britannia, 3 Hagg, 154.
Compare:—Marquess of Huntley, 3 Hagg. 246–7–8, 248.
Ardincape, 3 Hagg, 153.

(*c*) The matter of money value fades out of sight, in a case where as in this, the question is of property which was about to become, and which through the salvage services rendered by libellants, and through those only, did become, of transcendent public importance.

The day before those services commenced, what sum would have been considered too great to pay for the rescue from the bottom of the bay of those inestimable materials ?

3. The risk incurred in the salvage service.

(*a*) As to this, there can be no doubt upon the proofs. There was risk to life and limb ; serious, unusual and constant for the first three months—that is, until the commencement of operations for raising the vessel.

(*b*) The only question is, whether or not anything can be claimed, on this ground, by the libellants, as being a corporate body. This point will be discussed hereafter.

4. The value of the property employed in the service, and the risk to it.

(*a*) The total value was quite large. The value of the apparatus was $12,000 in New York. Of this Capt. Merritt carried back about $3,000 worth. The rest he sold in San Francisco for $1,000, or $1,550 gold, equal to about $2,300 currency. The entire cost of the expedition was $63,500 currency. Trans. 179, 180. This made the whole amount of property—apparatus, machinery, money disbursed—employed by the libellants in their undertaking, $68,500 ; or over $70,000, including Merritt's unpaid primage.

(*b*) The risk was such that the whole of this amount of property, except $5.300, was consumed or expended in the service. Had the enterprise failed, the entire amount of $68,500 would have been a total loss. It is a peculiar and striking feature of this case, that the salvage service required an outlay so large and increasing from day to day, and which continued constantly at risk of utter loss up to the closing hours of the enterprise.

5. The skill and knowledge shown in rendering the services; and 6. The time and labor.

(*a*) Under these two heads the Court is referred to what is stated as the summary of the evidence. Ante, pp. 10, 11.

(*b*) Nothing but the highest skill and knowledge made the enterprise a success. Perhaps even these would have failed, but for the organization, discipline and concerted action of the party, and its complete equipment.

(*c*) The time employed was doubtless as short as was practicable. The libellants were limited to ten months by their contract with the underwriters, but were still more limited in time by the absolute necessity of getting out the materials promptly to save them from being ruined, especially in the finer portions, by too long contact with the mud and water in the ship's hold. Hence their unremitting labors by day and night. Yet, though as many men were worked as could work to advantage, aided by all the best means and appliances, the time of the actual service occupied nearly seven months; the longest period of such continuous service in the annals of salvage: though in two other cases the time from the beginning to the end of the service may have been longer.

These two have hitherto been regarded as the *causes celebres* of salvage.

The Thetis, 3 Hagg, *14, *63, *65, *66.
The Jubilee, 3 Hagg, *43 note.

With these may now be joined this case of the Monitor Camanche, not second to either of them in in all the ingredients which constitute a great salvage service, and superior to either of them or to any salvage case on record, in the perfection of the success accomplished by the saving of the entire mass of materials in thousands of parts and pieces of the iron-clad Monitor; and the transcendant public importance of the property thus saved.

III.

A high merit, in a salvage service, is the alacrity and enterprise with which the salvors enter upon it.

This is a very marked feature in the conduct of the libellants in the present case. On Nov. 16, 1863, the Aquila sunk, with the materials on board. More than a month having been consumed, in unavailing efforts, at San Francisco, which demonstrated the utter inadequacy of the resources on that side, the libellants, at New York, at once undertook the salvage; organized a party of picked men, fully equipped, and on Dec. 24, dispatched them to San Francisco, where they arrived Jan. 18; the agreement being that the compensation was to be contingent on success.

This was done by the libellants, without a survey or reconnoissance of the wreck, or anything more than a general idea of the situation, and their knowledge of the failure of all the efforts made. It seems to have been enough for them to know that the materials of the Monitor

were in extreme danger of total loss, and that a national disaster was imminent. To avert this, they did not hesitate, at once to dispatch, to the other side of the Continent, at great expense, an expedition, including all their own best men ; depriving themselves of their chief means for the business of the Winter season, then commencing at this side, and assuming all the pecuniary and other risk and the responsibility of failure at the other side.

IV.

Under the circumstances of this case—the peculiar nature, situation and exposure of the property ; remote from succor, and demanding the most effective salvage services, thoroughly organized, promptly undertaken, and kept up unremittingly for months ; the enterprise full of difficulty, enhanced by danger from the outset, and constantly threatened with failure—the libellants, though a body corporate, are entitled to claim as salvors, a full salvage compensation on the merits of the services performed.

1. The answer in this case admits a salvage service by the libellants, but seeks to depreciate the nature of the services actually performed, and thus cut down the compensation. The objection, because of the corporate capacity of the libellants, was first heard of on the trial of the cause, in the District Court below. It is not in the answer, and was not suggested during the protracted operations of the libellants, carried on under the eyes of two of the claimants.

2. The ground of the objection seems to be that the libellants are a body corporate, endowed by positive law with a merely figurative being, and incapable of the natural sentiments and emotions. That as such it is impossible to attribute to them as a merit

the courage and fortitute in meeting dangers shown by persons employed by them at fixed wages, and not entitled to share in the salvage reward.

Has this objection, hard, ungracious and purely technical, as it certainly is in the present case, any just foundation in the law of salvage, or in the public policy out of which it sprung in the beginning, and which at all times has given it form and developement ?

V.

The law of salvage services to property in Admiralty, as distinguished from the law of similar services on land, is founded on a great public policy, established in the general interests of the commerce and navigation of the country.

This public policy requires, for the protection of those interests, that such salvage services should be sedulously fostered ; and, hence, that they should receive compensation, not as mere pay for work and labor, nor even as limited to the precise quantum of benefit in the particular case ; but on a scale so liberal as best to encourage such services.

The Blaireau, 2 Cranch, 266.
Wm. Beckford, 3 C. Rob., 355–6 ; approved, 3 Hagg., 248–9.
The Sarah, 3 C. Rob., 312; *note* 1.
Acc. Ewbank, 1 Sumn., 413.
Rising Sun, Ware 380.
See 2 Parsons Marit. Law, 618, for resumé of the cases.

VI.

The same public policy demands, at least as strongly, that the means of salvage service should be the most effi-

cient possible, and to that end should be always prepared, prompt, powerful and reliable. Hence the Court of Admiralty has not hesitated to accept all beneficial modes and instruments of salvage service, which from time to time are developed by the progressive forces of society ; even though it may depart from a settled rule of decision.

1. Thus the old rule that none can claim salvage reward who did not directly take part in person in the salvage service has been so often broken down in important classes of cases, that it is now the exception rather than the rule.

2. As where a ship sends part of her crew on salvage service, the crew who remain on board are entitled to share in the salvage earned.

The same principle has been supposed to apply where the actual salvors belonged to a party of which the others remained on shore.

3. A still stronger departure—made after considerable opposition—was when salvage was allowed to the owner of the ship engaged in the salvage service, though he may have been absent and ignorant of the transaction.

The same equity is extended even to the owner of the cargo where he has authorized the service : and probably also where he has not.

2 Parsons, Shipp'g and Adm., 278, and note 4. (Ed. 1869).

4. This departure, in favor of the owner of the vessel, was pushed still further in the case of steamers. The greatly increased power and efficiency of these vessels, then a new force in the maritime world, were cordially recognized and welcomed in admiralty, in the first case that arose there—and because it was the first.

The Raikes, 1 Hagg., 246 (1824), per Lord Stowell.

5. The precedent has since been followed out, and developed in numerous cases:

The Beulah, 1 W. Rob., 477.
Wm. Penn (C. C. So. Ca., Wayne, J.), 1 Am. L. Reg., 584.
Kingaloch, 26 E. L. & E., 599.
1 Curtis, C. C., 363.
2 Ibid., 362.
Acc. Island City, 1 Black, 130.
See 2 Parsons, Sh. & Adm., 299, note 5, citing many cases.

Less than fifty years ago in Admiralty, the claim of the salvor vessel was but little worth, as compared with that of men salvors. Now, keeping pace with the times, and their changed modes of salvage, the steamer is the real salvor, and has the lion's share of the reward.

6. And the larger, stauncher and more powerful the steamer, the more liberal the reward; though the danger to such a vessel is reduced by her superior qualities to a minimum.

The reason is, that society may be encouraged to give its best resources to the succor of life and property in distress at sea.

7. A leading consideration as to steamers is, that besides the value of the property which is generally at risk, they render salvage service with greater expedition, and often under circumstances where no other assistance could possibly avail.

The Kingaloch, 26 E. L. & E., 599.
Board of Trade Instructions to Receivers of Wreck, &c., on salvage, Art. 91, quoted in Maule & Pollock's Law of Merchant Shipping, 494, note q.

All the reasons for encouraging steamers, apply with equal force in favor of a powerful organization, such as the libellants.

7. (*a*) A pregnant instance of substituted service is, when the first set of salvors while prosecuting their operations are tortiously ousted by another set who complete the service ; but the law ascribes to the first set the whole merit of the services of the second set, and awards to them the entire compensation

See the Fleece, 3 W., Rob. 280.

8. These are all cases in which salvage rewards are allowed as of course, to those who have had no personal part in the salvage service. They are all cases of a substituted service, in which persons removed from the field of operations, may claim as salvors, on the strength of the actual service rendered by some person or property, which stands in their place, and is their substitute for the time being. Personal presence has not of late years been an essential. In the great and much contested case of the Thetis (3 Hagg, 58, 59, and 2 Knapp, 409 , it was held that the responsibility taken by the admiral in furnishing men and stores, was more valuable than his personal presence would have been.

Should the powerful steamer of the libellants perform in the best manner, a great salvage service, for which she had been at large cost expressly built and equipped, and at all times maintained in a state of the highest efficiency, could it be said, that because she was the property of a corporation, she must b denied a salvage compensation, or cut down to on which is no better than pay for work and labor ?

One ground assigned for giving a large salvage reward to powerful steamers is that "they are owned by great and opulent companies, and are fitted out by them at large cost."

The Perth, 3 Hagg, 416.

No such thing could be contended. That it could not shows how untenable is the objection urged in this case.

If in the case of a salvage service by their steamer, the libellants here stand as favorably before the Court as if they were natural persons, and not a corporation; why should they not stand equally well in the case of services performed by their agents and servants?

Either way, it is a case of substituted services, as sanctioned and rewarded in admiralty in numerous instances.

8. (*a*) The well considered decision of the late Chief Justice in the case of Vinden v. The Caroline (C. C't.), 6 M. Law Register, 222, asserts fully the doctrine of substituted service.

He holds, that where a steam-tug was kept in winter at the mouth of the Delaware to render salvage or towage services to vessels in distress, her owners were entitled to the 'full remuneration usually "awarded to salvors who peril life and property, "although the particular salvage service may not "have been actually accompanied by much danger "or labor." He says, again, p. 227: "It is a "well established policy of Courts of Admiralty, to "remunerate liberally salvors who risk life and "property, or who suffer hardships in rescuing a "vessel or cargo in danger of perishing. And I "cannot perceive any reason why a salvor who ex- "pends his money in preparing a vessel by which "the service can be rendered with less risk, and "keeps her at a place where danger is anticipated, "at a heavy daily expense, in order that assistance "may be promptly rendered when the emergency "shall arise."

9. In the growing complexities and divisions of labor of an advancing civilization, men are less and less able to act directly for themselves, and must act more and more through agents and servants. This important relation of agency, the most general in society, is not one which admiralty will disregard in respect to salvage services, which can be so much better performed by an organized body of drilled subordinates under one controlling head, than by ten times the number of undisciplined and unorganized wreckers.

Salvors are held responsible for the misconduct of those whom they make their agents, by employing them to aid them in a salvage service.

2 Parsons on Shipping and Adm., (1869), 312, 313.

It is difficult to see why they should not have the benefit of the good conduct of the same employees.

Agency and service are a great head in modern society. They are essential to a corporation. It can do no act without them.

Had the agents and servants sent out by the Coast Wrecking Co. to save the Monitor conducted that important service as badly as they conducted it admirably, and thereby ruined or lost the cargo, the company would justly be made responsible before the law.

Since it may be charged in heavy liability for the demerits of its servants, upon what principle is it denied credit for their meritorious services?

If the company is capable in law of performing a salvage service at all, upon what principle can we distinguish against it, as compared with other salvors who are natural persons, in respect of the liabilities, which are the same undoubtedly, or of the rewards of the service?

The extent of the reward depends on the value of the service rendered. This, in turn, depends on the difficulty and the risk of failure. It is impossible to estimate these two, without considering the danger. So far as danger existed, it aggravated the difficulty, and increased the risk of failure. Had one diver lost his life by an accident like that—the unforseen sagging of an iron "frame"—which cut off the finger of the diver Jenkins—the enterprise must have broken up, from the impossibility of getting divers to work.

For increased difficulty and risk of failure in any service, it is the law and common sense of men, that even on a *quantum meruit* in a court of law, there should be increased compensation. Much more where the compensation is contingent on complete success.

It is unnecessary to consider what would be the case should an agent or servant perform some special act of gallantry, merely incidental to the service in which he is employed, but which forms no necessary part of it, and was not one of the risks contemplated when the enterprise was undertaken. No such question is presented in this case. When it is presented, the Court will protect all existing equities.

The controlling force of this public policy over the law of salvage is very marked in the case of saving life. Admiralty has no jurisdiction to decree salvage reward in such a case. But whenever the saving of life can be tacked on to the saving of property, it will award an increased compensation. This is in pursuance of the same public policy that mariners may have greater security in serving, and passengers in traveling on vessels navigating the seas.

The enlarged public policy which demands and encourages the most efficient instruments of salvage service, is more than met and satisfied by the service rendered by the libellants in this case.

In every element of usefulness, it was of the highest class.

Is it to be rejected or cut down to the line of mere work and labor, because the instrument through which it was accomplished was a corporation, working through agents and servants? Especially, when it is clear that only a corporation like the libellants could have furnished the prepared, perfect organization, the trained men, the accumulated experience and skill, the ample means in money and material, without which, the enterprise, if attempted, must have been a failure.

Technically, it may be, that a corporation is an ideal incorporeal being, incapable of sentiments or emotions, as represented.

In the practical administration of the law by the Courts, it is far otherwise. A corporation is dealt with as capable of committing a tort or even a crime.

It is its legal authority for being, its franchise, that is incorporeal rather than itself. Collect at a general meeting all its trustees and stockholders, and you have occular physical demonstration of the corporation. An army is a very visible body, though the great authority by which it exists is invisible.

This Supreme Court, existing since the foundation of the Government, is an incorporeal, invisible, legal entity. The judges who from time to time compose it are visible beings.

As a historical fact, we know that during our late civil war, the great corporations of the country proved themselves by no means incapable of sentiments or emotions. They were warmed by the same fervid patriotism which animated the whole people, and they bore their full share in the unparalelled sacrifices of the time.

In the like spirit the libellants here acted, when they cheerfully undertook the task of rescuing from almost assured destruction the only iron-clad of the Pacific coast. As a mere mercantile question, they must have as promptly declined an enterprise the losses and risks of which at least balanced the rewards.

Associated service is no stranger—no *novus hospes* in admiralty in the law of salvage. It has over and over had generous welcome there.

The Susan, 1 Sprague, 504.

A great element of associated service is substituted service; by which each associate contributes his part of the service, labor, skill, money, advice, even responsibility, as the case may be, and has the benefit of the part contributed by every other. The captain of a salvor ship who stays aboard his ship, gets a larger share than his mate who goes with and actually conducts the enteprise, and has all the personal risk and exposure. This is because of the great responsibility borne by the Captain.

1 Conkling Adm., 294, and cases cited.
Thetis, 2 Knapp, *409.

In this case, did not the company representing its stockholders assume a very grave responsibility?

The corporation aggregate, which is but a form of substituted servive, is one of the great forces of civilization. It is the prevailing form of the associated energies, the money, enterprise, and intelligence of society. It is particularly adapted to those branches of business like salvage and wrecking, which require a permanent orgaization, costly appliances, trained services and considerable capital, which is content with slow or uncertain returns.

For the carrying on of a salvage or wrecking business on a large and effective scale, there is really no com-

parison between the efforts of individuals casually employed for the occasion, often but poorly provided with vessels or other appliances, and under any circumstances unprepared for any long, remote or costly enterprises; on the one hand; and on the other, a powerful company like the libellants, established expressly for the business; provided with capital, trained men, vessels, apparatus, machinery, a thorough orgaization, which enable it at any time to undertake and carry through the most arduous and protracted salvage services, in the face of great risks, any where on American waters, however remote, and at whatever expense.

What individuals, for instance, could have been found to undertake the salvage in this case, at a certain money cost of nearly seventy thousand dollars; compensation payable only in case of success?

After allowing for the greater use of steam in carrying passengers and freight, it is not too much to say that the company here has done a great deal for the security of life and property on the dangerous coast within the sphere of its usefulness. It is rare now to hear of shipwrecks with fearful loss of life or destruction of property. The wrecker of Barnegat, more than half pirate, finding his occupation gone, has disappeared, himself.

The question to be now determined is, shall these powerful corporate organizations be recognized in admiralty on the same footing with individual salvors, and like them be rewarded according to the merit of the service performed? Or, shall they be put under a sort of outlawry, as unworthy of protection, and thus be hunted out of existence? They cannot exist if shut down to the pay of mere work and labor. Shall life and property on the navigable waters be deprived of their best reliance, and be cast back for succor on the old inefficient resource of casual help from individuals?

The fundamental public policy which is the supreme law of the subject, demands that every new efficient means or instrument of salvage service shall be recognized, accepted and encouraged in admiralty.

We offer here, what is proved to be the most efficient instrument yet produced by the forces of Americn society.

Shall it be accepted or rejected ?

VII.

The ground stated in the last preceding point is confirmed by the fact that the company, so far as it possibly can, puts itself in the place of its agents and servants engaged in services of peculiar danger or difficulty.

The proofs are, that the company not only pays to its agents and servants who are engaged in services of difficulty or danger, a rate of wages or salary proportionately high, but in case of injury to any of them, while so engaged, its practice is to take care of them till they recover, and in case of their death, of their families ; and to place them or their families, as the case may be, in a position to earn a livelihood. It also pays all doctor's bills of men hurt in its employment. Trans. 178, 216.

The rate of wages paid is high in proportion, and far above pay for mere work and labor. Capt. Merritt's salary is $4,500 a year with primage for this service, about $1,500 to $2,000 ; besides all expenses paid. His assistant, Pool, has $1,200 a year and $500 primage. He and the others who went out with the expedition had all their expenses paid from the time they left New York until they returned. The principal divers averaged $13 a day,

for the same time out and back. Their day's work being but four hours, these wages are at the rate of $29 25 for a day of ten hours: besides all expenses paid. The divers regularly employed by the company are on half pay while not engaged in service. Trans. 176, 177.

This mode of receiving their compensation seems to to be entirely satisfactory to the company's men. Though unusually intelligent and well informed as to their rights, they make no complaint of the company.

VIII.

In any view, the decree below should be affirmed.

The sum to be collected under it is no more than was justly earned by the libellants.

The decree in the Circuit Court embraced a summary judgment on the bond on appeal, which was for $17,000 gold. This sum, with costs, and such allowance as may be made by the Court, is all that can be collected by the libellants.

Though they should be denied any extraordinary compensation for the personal dangers incurred by their officers and men, yet they are clearly entitled to the sum referred to as just compensation for the salvage services rendered.

Upon a strict *quantum meruit* at law, the danger could not be wholly left out of view, as above shown. It was an inseparable element of the difficulty encountered, and the risk of total failure constantly run; any payment being contingent on substantially complete success.

This, with the other elements which existed, to the benefit of which the libellants are entitled; as the great peril and value of the property, the skill, care and diligence shown, and the time, labor and capital expended; make out a case upon which the libellants are certainly entitled to at least the amount to be collected under the decree below.

An important element of compensation is the expense incurred by the company in keeping its boats, apparatus equipment and general organization of men and material, always in a state of preparation to perform any salvage service, however difficult remote or protracted. Public policy dictates a liberal consideration of all this without too strict reference to the quantum of service in the particular case. Ships have to pay largely for light houses, though this or that ship may derive no benefit from them on this or that particular occasion.

See the Sarah, 1 C., Rob. * 313, note.
The Susan, 1 Sprague, 504.

The decision in the Caroline, 6 Am. L. Register, 222, is a vigorous and explicit assertion of the same general principle.

It should not be forgotten that the company if it did not seriously embarrass its operations on the Atlantic coast for the winter, took that risk.

As it turned out, the work was stopped by stormy weather for two days and a half only, out of the whole season; a most remarkable and unexpected result, which had probably never before occurred and might not, ever again.

The libellants had to expend nearly $64,000 before they were entitled to receive anything. They might never have been so entitled.

No judge or jury in a court of law, or chancellor in equity would have hesitated to say that in such

a case, on such a risk, a contingent reward of $137,500, as fixed in the contract with the underwriters was reasonable.

That they agreed to pay at that rate is evidence of of what they deemed a fair rate of compensation.

Irelan, one of claimants, witnesses though testifying after the fact, and after the service had been so successfully performed—and who was quite willing, as he was the only one to depreciate its merit—thought he would have undertaken the work for $75,000 to $80,000, gold; say, in currency, $113,000 to 120,000. But he does not say that he would have undertaken it at that or at any price, payable only in the event of success, he advancing all the costs of the enterprise.

In this cause, the libellants proceed for the salvage of 75–400ths of the materials of the Camanche; being the portion not covered by insurance.

The contract between the Underwriters and the libellants under which the latter agreed to undertake the salvage of the materials, &c., assumed this value to be as stated in the policies $400,000; of this amount $340,000 was covered by the policies, leaving $60,000 uninsured. The agreed salvage was $110,000, one-half gold and one-half currency, to be paid by the several Insurance companies, in the proportions which the sums insured by them respectively bore to the whole amount of $400,000. Trans. 286. One Company, the Columbian, became insolvent before paying anything. This left $75,000 of the policy value uninsured.

The agreed salvage was equal at then current rates of gold, to about $137,500, or about $4,000 more than one-third of the assumed value; and very nearly just double the actual cost to the libellants of the salvage service.

The sum fixed in the bond, $17,000 gold, at the present rates, is equal to 75–400ths of but $117,866, as a total salvage compensation. This diminishes proportionably the net results of the service to the libellants, and gives a corresponding advantage to the claimants.

At this rate, the company would receive for this great salvage service less than $55,000 currency, after deducting the money and material sunk in the enterprise. $55,000 clear, from a salvage of property of such value, in such peril, at such constant risk of money means and labor for nearly seven months, if it be liberal, is not at all excessive, even on a *qantum meruit* in a court of law or chancery.

No tender of any sum was ever made to the libellants by the claimants.

We ask for an affirmance of the decree of the Circuit Court; with an allowance at the rate of 10 per cent. per annum, since the date of the decree, on the amount of the bond, as a judgment against the sureties.

E. CASSERLY,

For Coast Wrecking Co., Respondents.